1,947	1,962	1,851	1,821	1,825	1,799	**7,296**	1,709	1,654
5,881	5,925	5,590	5,501	5,512	5,435	**22,038**	5,162	4,997
0	0	0	0	0	0	**0**	0	0
120,539	121,438	114,582	112,743	112,969	111,404	**451,699**	105,796	102,421
0	0	0	0	0	0	**0**	0	0
4,430	4,463	4,211	4,143	4,152	4,094	**16,601**	3,888	3,764
3,498	3,524	3,325	3,272	3,278	3,233	**13,108**	3,070	2,972
91,255	91,936	86,745	85,353	85,524	84,340	**341,962**	80,093	77,539
75	76	71	70	70	69	**281**	66	64
156,873	158,044	149,120	146,727	147,022	144,985	**587,854**	137,685	133,294
90	91	86	84	84	83	**337**	79	76
8,145	8,206	7,742	7,618	7,634	7,528	**30,522**	7,149	6,921
180	181	171	168	169	166	**675**	158	153
6,625	6,674	6,298	6,197	6,209	6,123	**24,826**	5,815	5,629
0	0	0	0	0	0	**0**	0	0
6,648	6,698	6,319	6,218	6,231	6,144	**24,912**	5,835	5,649
98	99	93	92	92	91	**367**	86	83
0	0	0	0	0	0	**0**	0	0
60	60	57	56	56	55	**225**	53	51
6,545	6,594	6,222	6,122	6,134	6,049	**24,526**	5,744	5,561
23,404	23,579	22,247	21,890	21,934	21,630	**87,702**	20,541	19,886
0	0	0	0	0	0	**0**	0	0
360	363	342	337	337	333	**1,349**	316	306
18,581	18,720	17,663	17,379	17,414	17,173	**69,629**	16,308	15,788
361,628	364,326	343,756	338,240	338,919	334,223	**1,355,138**	317,396	307,272
3,038	3,061	2,888	2,842	2,847	2,808	**11,384**	2,666	2,581
372,650	375,431	354,234	348,549	349,248	344,410	**1,396,441**	327,070	316,638
2,035	2,050	1,934	1,903	1,907	1,881	**7,626**	1,786	1,729
24,265	24,446	23,066	22,696	22,741	22,426	**90,929**	21,297	20,618
30	30	29	28	28	28	**112**	26	25
12,429	12,522	11,815	11,625	11,648	11,487	**46,576**	10,909	10,561
16,876	17,002	16,042	15,785	15,816	15,597	**63,240**	14,812	14,339
0	0	0	0	0	0	**0**	0	0
1,760	1,773	1,673	1,646	1,649	1,627	**6,595**	1,545	1,495
81	82	77	76	76	75	**304**	71	69
8,917	8,984	8,476	8,340	8,357	8,241	**33,415**	7,826	7,577
0	0	0	0	0	0	**0**	0	0
112,468	113,307	106,910	105,194	105,405	103,945	**421,454**	98,712	95,563
45	45	43	42	42	42	**169**	39	38
5,890	5,934	5,599	5,509	5,520	5,444	**22,072**	5,170	5,005
1,456	1,467	1,384	1,362	1,365	1,346	**5,456**	1,278	1,237
19,692	19,839	18,719	18,418	18,455	18,200	**73,792**	17,283	16,732
237	239	225	222	222	219	**888**	208	201
32,614	32,857	31,002	30,505	30,566	30,142	**122,215**	28,625	27,712
1	1	1	1	1	1	**4**	1	1
9,540	9,611	9,069	8,923	8,941	8,817	**35,749**	8,373	8,106
20,190	20,341	19,192	18,884	18,922	18,660	**75,659**	17,720	17,155
159,890	161,083	151,988	149,549	149,849	147,773	**599,160**	140,333	135,857
7,875	7,934	7,486	7,366	7,380	7,278	**29,510**	6,912	6,691
136,306	137,323	129,570	127,490	127,746	125,977	**510,783**	119,634	115,818
3,509	3,535	3,336	3,282	3,289	3,243	**13,149**	3,080	2,982
28,745	28,959	27,324	26,886	26,940	26,567	**107,717**	25,229	24,424

89	90	85	83	83	82	**334**	78	76
1,446	1,457	1,375	1,352	1,355	1,336	**5,419**	1,269	1,229
1,044	1,052	992	976	978	965	**3,912**	916	887
0	0	0	0	0	0	**0**	0	0
10,277	10,354	9,769	9,612	9,632	9,498	**38,511**	9,020	8,732
40	40	38	37	37	37	**150**	35	34
19,573	19,719	18,606	18,307	18,344	18,090	**73,346**	17,179	16,631
60	60	57	56	56	55	**225**	53	51
1,050	1,058	998	982	984	970	**3,935**	922	892
107,683	108,487	102,361	100,719	100,921	99,523	**403,523**	94,512	91,497
1,303,344	1,313,069	######	######	######	######	**4,884,055**	######	######
1,279,914	1,289,465	######	######	######	######	**4,796,255**	######	######
37,400	37,679	35,552	34,981	35,051	34,566	**140,150**	32,825	31,778
15,380	15,495	14,620	14,385	14,414	14,214	**57,634**	13,499	13,068
96,006	96,722	91,261	89,797	89,977	88,731	**359,766**	84,263	81,575
186,983	188,378	177,742	174,890	175,241	172,813	**700,686**	164,113	158,878
44,408	44,739	42,213	41,536	41,619	41,043	**166,411**	38,976	37,733
1,127	1,135	1,071	1,054	1,056	1,042	**4,223**	989	958
52,289	52,679	49,705	48,907	49,005	48,326	**195,944**	45,893	44,430
1,210	1,219	1,150	1,132	1,134	1,118	**4,534**	1,062	1,028
85,193	85,829	80,983	79,683	79,843	78,737	**319,246**	74,773	72,388
874	881	831	817	819	808	**3,275**	767	743
4,095	4,126	3,893	3,830	3,838	3,785	**15,345**	3,594	3,479
3,461	3,487	3,290	3,237	3,244	3,199	**12,969**	3,038	2,941
99,311	100,052	94,403	92,888	93,074	91,785	**372,151**	87,164	84,384
15	15	14	14	14	14	**56**	13	13
152,276	153,412	144,751	142,428	142,713	140,736	**570,628**	133,651	129,388
198	199	188	185	186	183	**742**	174	168
4,640	4,675	4,411	4,340	4,349	4,288	**17,388**	4,072	3,943
3,750	3,778	3,565	3,507	3,515	3,466	**14,052**	3,291	3,186
39,374	39,668	37,428	36,827	36,901	36,390	**147,547**	34,558	33,456
968	975	920	905	907	895	**3,627**	850	823
64,144	64,623	60,974	59,995	60,116	59,283	**240,368**	56,298	54,503
801	807	761	749	751	740	**3,002**	703	681
9,135	9,203	8,684	8,544	8,561	8,443	**34,232**	8,018	7,762
395	398	375	369	370	365	**1,480**	347	336
5,425	5,465	5,157	5,074	5,084	5,014	**20,329**	4,761	4,610
6,732	6,782	6,399	6,297	6,309	6,222	**25,227**	5,909	5,720
480	484	456	449	450	444	**1,799**	421	408
4,293	4,325	4,081	4,015	4,023	3,968	**16,087**	3,768	3,648
72,282	72,821	68,710	67,607	67,743	66,804	**270,864**	63,441	61,417
384	387	365	359	360	355	**1,439**	337	326
80,513	81,114	76,534	75,306	75,457	74,412	**301,708**	70,665	68,411
235	237	223	220	220	217	**881**	206	200
10,381	10,458	9,868	9,710	9,729	9,594	**38,901**	9,111	8,821
633	638	602	592	593	585	**2,372**	556	538
16,410	16,532	15,599	15,349	15,379	15,166	**61,494**	14,403	13,943
17,864	17,997	16,981	16,709	16,742	16,510	**66,942**	15,679	15,179
1,200	1,209	1,141	1,122	1,125	1,109	**4,497**	1,053	1,020
847	853	805	792	794	783	**3,174**	743	720
24,628	24,812	23,411	23,035	23,081	22,762	**92,289**	21,616	20,926
521	525	495	487	488	482	**1,952**	457	443

48,703	49,066	46,296	45,553	45,645	45,012	**182,506**	42,746	41,383
195	196	185	182	183	180	**731**	171	166
3,660	3,687	3,479	3,423	3,430	3,383	**13,715**	3,212	3,110
26,911	27,112	25,581	25,171	25,221	24,872	**100,844**	23,619	22,866
513,473	517,304	488,097	480,264	481,228	474,561	**1,924,151**	450,669	436,294
470,617	474,129	447,359	440,180	441,063	434,953	**1,763,555**	413,054	399,879
43,015	43,336	40,889	40,233	40,314	39,755	**161,191**	37,754	36,549
1,699	1,712	1,615	1,589	1,592	1,570	**6,367**	1,491	1,444
48,807	49,171	46,395	45,650	45,742	45,108	**182,896**	42,837	41,471
254	256	241	238	238	235	**952**	223	216
66,564	67,061	63,274	62,259	62,384	61,520	**249,437**	58,422	56,559
3,315	3,340	3,151	3,101	3,107	3,064	**12,422**	2,910	2,817
4,401	4,434	4,184	4,116	4,125	4,067	**16,492**	3,863	3,739
69,087	69,603	65,673	64,619	64,748	63,851	**258,891**	60,637	58,703
1,292	1,302	1,228	1,208	1,211	1,194	**4,842**	1,134	1,098
89,738	90,408	85,303	83,934	84,103	82,938	**336,278**	78,762	76,250
4,944	4,981	4,700	4,624	4,634	4,569	**18,527**	4,339	4,201
5,520	5,561	5,247	5,163	5,173	5,102	**20,685**	4,845	4,690
917	924	872	858	859	848	**3,436**	805	779
21,991	22,155	20,904	20,569	20,610	20,324	**82,407**	19,301	18,686
30	30	29	28	28	28	**112**	26	25
64,020	64,498	60,856	59,879	60,000	59,168	**239,904**	56,190	54,397
0	0	0	0	0	0	**0**	0	0
2,620	2,640	2,491	2,451	2,455	2,421	**9,818**	2,300	2,226
3,149	3,172	2,993	2,945	2,951	2,910	**11,800**	2,764	2,676
52,321	52,711	49,735	48,937	49,035	48,356	**196,064**	45,921	44,457
0	0	0	0	0	0	**0**	0	0
89,257	89,923	84,846	83,484	83,652	82,493	**334,475**	78,340	75,841
0	0	0	0	0	0	**0**	0	0
3,330	3,355	3,165	3,115	3,121	3,078	**12,479**	2,923	2,829
2,566	2,585	2,439	2,400	2,405	2,372	**9,616**	2,252	2,180
100,225	100,973	95,272	93,743	93,931	92,630	**375,576**	87,966	85,160
182	183	173	170	171	168	**682**	160	155
151,401	152,531	143,919	141,609	141,893	139,928	**567,349**	132,883	128,644
227	229	216	212	213	210	**851**	199	193
17,700	17,832	16,825	16,555	16,588	16,359	**66,328**	15,535	15,040
975	982	927	912	914	901	**3,654**	856	828
46,763	47,112	44,452	43,739	43,826	43,219	**175,236**	41,043	39,734
392	395	373	367	367	362	**1,469**	344	333
84,914	85,548	80,718	79,422	79,582	78,479	**318,200**	74,528	72,151
686	691	652	642	643	634	**2,571**	602	583
1,200	1,209	1,141	1,122	1,125	1,109	**4,497**	1,053	1,020
360	363	342	337	337	333	**1,349**	316	306
11,818	11,906	11,234	11,054	11,076	10,922	**44,286**	10,373	10,042
84	85	80	79	79	78	**315**	74	71
16,429	16,552	15,617	15,366	15,397	15,184	**61,565**	14,420	13,960
2,880	2,901	2,738	2,694	2,699	2,662	**10,792**	2,528	2,447

DC, HI, MI, MN
19,441
304,702
4,408

530,178
3,432
34,460

DE, LA, MD

42,880
637,860
536,295

0.1%	-3.9%		-12.8%	-90.0%	-28.7%	-26.0%	-28.9%
Q3 2011	Q4 2011	**CY2011**	Q1 2012	Q2 2012	Q3 2012	Q4 2012	Q1 2013
883	848	**3,525**	740	74	53	39	28
19,297	18,535	**77,005**	16,167	1,621	1,156	856	609
18,405	17,678	**73,446**	15,420	1,546	1,103	816	581
100	96	**397**	83	8	6	4	3
255	245	**1,019**	214	21	15	11	8
10,293	9,887	**41,076**	8,624	865	617	456	325
178,398	171,352	**711,909**	149,467	14,989	10,687	7,909	5,627
1,343	1,290	**5,358**	1,125	113	80	60	42
176,143	169,187	**702,911**	147,578	14,800	10,552	7,809	5,556
1,137	1,092	**4,536**	952	96	68	50	36
14,878	14,290	**59,372**	12,465	1,250	891	660	469
0	0	**0**	0	0	0	0	0
100,857	96,874	**402,477**	84,501	8,474	6,042	4,471	3,181
51	49	**204**	43	4	3	2	2
96,091	92,296	**383,459**	80,508	8,074	5,756	4,260	3,031
0	0	**0**	0	0	0	0	0
0	0	**0**	0	0	0	0	0
43,364	41,652	**173,049**	36,332	3,644	2,598	1,923	1,368
828,079	795,376	**3,304,507**	693,791	69,577	49,606	36,712	26,120
3,627	3,484	**14,475**	3,039	305	217	161	114
660,387	634,306	**2,635,318**	553,293	55,487	39,560	29,278	20,831

1Q09-3Q09 Medi Util

4,866	4,674	**19,419**	4,077	409	292	216	153
25,612	24,601	**102,207**	21,459	2,152	1,534	1,135	808
3,380	3,246	**13,487**	2,832	284	202	150	107
70,982	68,179	**283,259**	59,471	5,964	4,252	3,147	2,239
77	74	**306**	64	6	5	3	2
71,368	68,549	**284,797**	59,794	5,996	4,275	3,164	2,251
0	0	**0**	0	0	0	0	0
2,885	2,771	**11,511**	2,417	242	173	128	91
10,492	10,078	**41,871**	8,791	882	629	465	331
144,726	139,010	**577,539**	121,256	12,160	8,670	6,416	4,565
14	13	**54**	11	1	1	1	0
143,125	137,472	**571,149**	119,914	12,026	8,574	6,345	4,515
7,594	7,294	**30,305**	6,363	638	455	337	240
950	912	**3,789**	796	80	57	42	30
18,070	17,356	**72,108**	15,139	1,518	1,082	801	570
539	517	**2,149**	451	45	32	24	17
13,277	12,752	**52,981**	11,124	1,116	795	589	419
0	0	**0**	0	0	0	0	0
1,430	1,373	**5,705**	1,198	120	86	63	45
2,535	2,435	**10,115**	2,124	213	152	112	80
52,352	50,284	**208,913**	43,862	4,399	3,136	2,321	1,651
385	369	**1,535**	322	32	23	17	12
60,150	57,775	**240,033**	50,396	5,054	3,603	2,667	1,897
355	341	**1,416**	297	30	21	16	11
3,680	3,535	**14,686**	3,083	309	220	163	116
22,900	21,996	**91,385**	19,187	1,924	1,372	1,015	722
387,913	372,593	**1,547,994**	325,006	32,593	23,238	17,198	12,236
6,639	6,377	**26,492**	5,562	558	398	294	209
364,478	350,083	**1,454,473**	305,371	30,624	21,834	16,159	11,497
5,706	5,481	**22,771**	4,781	479	342	253	180
25,548	24,539	**101,952**	21,405	2,147	1,530	1,133	806
916	880	**3,657**	768	77	55	41	29
28,721	27,587	**114,614**	24,064	2,413	1,721	1,273	906
256	246	**1,022**	215	22	15	11	8
37,435	35,957	**149,388**	31,365	3,145	2,243	1,660	1,181
204	196	**815**	171	17	12	9	6
5,965	5,729	**23,803**	4,998	501	357	264	188
26	25	**102**	21	2	2	1	1
477	459	**1,905**	400	40	29	21	15
19	18	**75**	16	2	1	1	1
329	316	**1,314**	276	28	20	15	10
598	575	**2,387**	501	50	36	27	19
14,623	14,045	**58,353**	12,251	1,229	876	648	461
0	0	**0**	0	0	0	0	0
241,495	231,957	**963,701**	202,332	20,291	14,467	10,707	7,617
51	49	**204**	43	4	3	2	2
14,903	14,314	**59,470**	12,486	1,252	893	661	470
768	738	**3,066**	644	65	46	34	24
20,451	19,643	**81,609**	17,134	1,718	1,225	907	645
34,081	32,735	**136,003**	28,554	2,864	2,042	1,511	1,075
26	25	**105**	22	2	2	1	1
4,306	4,136	**17,182**	3,607	362	258	191	136

27,977	26,872	**111,643**	23,440	2,351	1,676	1,240	882
294,484	282,854	**1,175,160**	246,728	24,743	17,641	13,056	9,289
971	933	**3,874**	813	82	58	43	31
244,539	234,882	**975,850**	204,883	20,547	14,649	10,841	7,714
1,122	1,078	**4,479**	940	94	67	50	35
21,921	21,055	**87,477**	18,366	1,842	1,313	972	691
6,240	5,993	**24,900**	5,228	524	374	277	197
90,781	87,196	**362,267**	76,059	7,628	5,438	4,025	2,864
4,115	3,952	**16,421**	3,448	346	247	182	130
113,764	109,271	**453,981**	95,315	9,559	6,815	5,044	3,588
3,666	3,521	**14,628**	3,071	308	220	163	116
17,073	16,399	**68,132**	14,305	1,435	1,023	757	539
2,298	2,208	**9,171**	1,926	193	138	102	72
66,803	64,165	**266,583**	55,970	5,613	4,002	2,962	2,107
17	16	**68**	14	1	1	1	1
67,316	64,658	**268,631**	56,400	5,656	4,033	2,984	2,123
7,658	7,356	**30,560**	6,416	643	459	340	242
1,404	1,349	**5,603**	1,176	118	84	62	44
4,754	4,566	**18,971**	3,983	399	285	211	150
1,465	1,407	**5,847**	1,228	123	88	65	46
77,933	74,855	**310,997**	65,295	6,548	4,669	3,455	2,458
1,647	1,582	**6,574**	1,380	138	99	73	52
0	0	**0**	0	0	0	0	0
12,699	12,197	**50,676**	10,639	1,067	761	563	401
274,543	263,700	**1,095,582**	230,021	23,068	16,446	12,172	8,660
89	86	**357**	75	8	5	4	3
216,382	207,836	**863,487**	181,292	18,181	12,962	9,593	6,825
128	123	**509**	107	11	8	6	4
13,563	13,028	**54,125**	11,364	1,140	813	601	428
2,498	2,400	**9,969**	2,093	210	150	111	79
31,350	30,112	**125,103**	26,266	2,634	1,878	1,390	989
0	0	**0**	0	0	0	0	0
59,462	57,113	**237,286**	49,819	4,996	3,562	2,636	1,876
0	0	**0**	0	0	0	0	0
5,616	5,394	**22,411**	4,705	472	336	249	177
21,253	20,414	**84,811**	17,806	1,786	1,273	942	670
215,860	207,335	**861,406**	180,855	18,137	12,931	9,570	6,809
4,446	4,270	**17,742**	3,725	374	266	197	140
179,801	172,700	**717,508**	150,643	15,107	10,771	7,971	5,671
525	504	**2,095**	440	44	31	23	17
20,071	19,278	**80,095**	16,816	1,686	1,202	890	633
764	734	**3,049**	640	64	46	34	24
12,292	11,807	**49,052**	10,299	1,033	736	545	388
38	37	**153**	32	3	2	2	1
151,814	145,818	**605,825**	127,195	12,756	9,094	6,731	4,789
8,580	8,241	**34,238**	7,188	721	514	380	271
13,911	13,361	**55,511**	11,655	1,169	833	617	439
235,720	226,410	**940,655**	197,493	19,806	14,121	10,450	7,435
3,193	3,067	**12,744**	2,676	268	191	142	101
334,956	321,727	**1,336,664**	280,637	28,144	20,066	14,850	10,566
2,920	2,805	**11,654**	2,447	245	175	129	92
24,123	23,170	**96,264**	20,211	2,027	1,445	1,069	761

1,657	1,591	**6,611**	1,388	139	99	73	52
5,004	4,807	**19,969**	4,193	420	300	222	158
0	0	**0**	0	0	0	0	0
102,567	98,516	**409,299**	85,934	8,618	6,144	4,547	3,235
0	0	**0**	0	0	0	0	0
3,769	3,621	**15,042**	3,158	317	226	167	119
2,976	2,859	**11,878**	2,494	250	178	132	94
77,649	74,582	**309,863**	65,057	6,524	4,652	3,443	2,449
64	61	**255**	53	5	4	3	2
133,483	128,212	**532,674**	111,836	11,216	7,996	5,918	4,210
77	74	**306**	64	6	5	3	2
6,931	6,657	**27,657**	5,807	582	415	307	219
153	147	**611**	128	13	9	7	5
5,637	5,415	**22,496**	4,723	474	338	250	178
0	0	**0**	0	0	0	0	0
5,657	5,433	**22,574**	4,739	475	339	251	178
83	80	**333**	70	7	5	4	3
0	0	**0**	0	0	0	0	0
51	49	**204**	43	4	3	2	2
5,569	5,349	**22,224**	4,666	468	334	247	176
19,914	19,128	**79,470**	16,685	1,673	1,193	883	628
0	0	**0**	0	0	0	0	0
306	294	**1,222**	257	26	18	14	10
15,811	15,186	**63,093**	13,247	1,328	947	701	499
307,709	295,557	**1,227,934**	257,808	25,855	18,433	13,642	9,706
2,585	2,483	**10,316**	2,166	217	155	115	82
317,088	304,565	**1,265,360**	265,666	26,643	18,995	14,058	10,002
1,732	1,663	**6,910**	1,451	145	104	77	55
20,647	19,832	**82,394**	17,299	1,735	1,237	915	651
26	25	**102**	21	2	2	1	1
10,576	10,158	**42,204**	8,861	889	634	469	334
14,360	13,793	**57,304**	12,031	1,207	860	637	453
0	0	**0**	0	0	0	0	0
1,498	1,438	**5,976**	1,255	126	90	66	47
69	66	**275**	58	6	4	3	2
7,587	7,288	**30,278**	6,357	638	455	336	239
0	0	**0**	0	0	0	0	0
95,699	91,920	**381,893**	80,180	8,041	5,733	4,243	3,019
38	37	**153**	32	3	2	2	1
5,012	4,814	**20,000**	4,199	421	300	222	158
1,239	1,190	**4,944**	1,038	104	74	55	39
16,756	16,094	**66,866**	14,039	1,408	1,004	743	529
202	194	**805**	169	17	12	9	6
27,751	26,655	**110,743**	23,251	2,332	1,662	1,230	875
1	1	**3**	1	0	0	0	0
8,118	7,797	**32,394**	6,801	682	486	360	256
17,180	16,501	**68,557**	14,394	1,443	1,029	762	542
136,050	130,677	**542,918**	113,987	11,431	8,150	6,032	4,291
6,701	6,436	**26,740**	5,614	563	401	297	211
115,983	111,402	**462,837**	97,174	9,745	6,948	5,142	3,658
2,986	2,868	**11,915**	2,502	251	179	132	94
24,459	23,493	**97,606**	20,493	2,055	1,465	1,084	772

76	73	**302**	63	6	5	3	2
1,230	1,182	**4,910**	1,031	103	74	55	39
888	853	**3,545**	744	75	53	39	28
0	0	**0**	0	0	0	0	0
8,745	8,399	**34,896**	7,327	735	524	388	276
34	33	**136**	29	3	2	2	1
16,655	15,997	**66,462**	13,954	1,399	998	738	525
51	49	**204**	43	4	3	2	2
893	858	**3,565**	749	75	54	40	28
91,627	88,009	**365,646**	76,768	7,699	5,489	4,062	2,890
######	######	**4,425,600**	929,168	93,182	66,436	49,167	34,982
######	######	**4,346,042**	912,464	91,507	65,241	48,284	34,353
31,824	30,567	**126,994**	26,663	2,674	1,906	1,411	1,004
13,087	12,570	**52,224**	10,965	1,100	784	580	413
81,691	78,465	**325,995**	68,444	6,864	4,894	3,622	2,577
159,104	152,820	**634,914**	133,302	13,368	9,531	7,054	5,019
37,787	36,294	**150,791**	31,659	3,175	2,264	1,675	1,192
959	921	**3,827**	803	81	57	43	30
44,493	42,736	**177,551**	37,277	3,738	2,665	1,973	1,403
1,030	989	**4,109**	863	87	62	46	32
72,491	69,628	**289,279**	60,735	6,091	4,343	3,214	2,287
744	714	**2,968**	623	62	45	33	23
3,484	3,347	**13,905**	2,919	293	209	154	110
2,945	2,829	**11,752**	2,467	247	176	131	93
84,504	81,166	**337,218**	70,800	7,100	5,062	3,746	2,666
13	12	**51**	11	1	1	1	0
129,572	124,454	**517,064**	108,559	10,887	7,762	5,744	4,087
168	162	**672**	141	14	10	7	5
3,948	3,792	**15,755**	3,308	332	237	175	125
3,191	3,065	**12,733**	2,673	268	191	141	101
33,503	32,180	**133,697**	28,070	2,815	2,007	1,485	1,057
824	791	**3,287**	690	69	49	37	26
54,580	52,425	**217,806**	45,729	4,586	3,270	2,420	1,722
682	655	**2,720**	571	57	41	30	21
7,773	7,466	**31,019**	6,512	653	466	345	245
336	323	**1,341**	282	28	20	15	11
4,616	4,434	**18,421**	3,868	388	277	205	146
5,728	5,502	**22,859**	4,799	481	343	254	181
408	392	**1,630**	342	34	24	18	13
3,653	3,509	**14,577**	3,061	307	219	162	115
61,505	59,076	**245,439**	51,531	5,168	3,684	2,727	1,940
327	314	**1,304**	274	27	20	14	10
68,508	65,803	**273,388**	57,399	5,756	4,104	3,037	2,161
200	192	**798**	168	17	12	9	6
8,833	8,484	**35,249**	7,401	742	529	392	279
539	517	**2,149**	451	45	32	24	17
13,963	13,412	**55,721**	11,699	1,173	836	619	440
15,200	14,600	**60,659**	12,735	1,277	911	674	479
1,021	981	**4,075**	855	86	61	45	32
721	692	**2,876**	604	61	43	32	23
20,956	20,128	**83,626**	17,558	1,761	1,255	929	661
443	426	**1,769**	371	37	27	20	14

41,441	39,805	**165,375**	34,721	3,482	2,483	1,837	1,307
166	159	**662**	139	14	10	7	5
3,114	2,991	**12,428**	2,609	262	187	138	98
22,899	21,994	**91,378**	19,185	1,924	1,372	1,015	722
436,914	419,659	**1,743,535**	366,060	36,711	26,173	19,370	13,782
400,448	384,633	**1,598,014**	335,508	33,647	23,989	17,754	12,631
36,601	35,156	**146,061**	30,666	3,075	2,193	1,623	1,155
1,446	1,389	**5,769**	1,211	121	87	64	46
41,530	39,890	**165,728**	34,795	3,489	2,488	1,841	1,310
216	208	**862**	181	18	13	10	7
56,639	54,402	**226,023**	47,454	4,759	3,393	2,511	1,787
2,821	2,709	**11,256**	2,363	237	169	125	89
3,745	3,597	**14,944**	3,138	315	224	166	118
58,786	56,464	**234,590**	49,253	4,939	3,522	2,606	1,854
1,099	1,056	**4,387**	921	92	66	49	35
76,358	73,342	**304,712**	63,975	6,416	4,574	3,385	2,409
4,207	4,041	**16,788**	3,525	353	252	187	133
4,697	4,511	**18,744**	3,935	395	281	208	148
780	749	**3,114**	654	66	47	35	25
18,712	17,973	**74,672**	15,678	1,572	1,121	830	590
26	25	**102**	21	2	2	1	1
54,475	52,323	**217,385**	45,641	4,577	3,263	2,415	1,718
0	0	**0**	0	0	0	0	0
2,229	2,141	**8,896**	1,868	187	134	99	70
2,679	2,574	**10,693**	2,245	225	161	119	85
44,520	42,762	**177,660**	37,300	3,741	2,667	1,974	1,404
0	0	**0**	0	0	0	0	0
75,949	72,949	**303,079**	63,632	6,381	4,550	3,367	2,396
0	0	**0**	0	0	0	0	0
2,833	2,722	**11,307**	2,374	238	170	126	89
2,183	2,097	**8,713**	1,829	183	131	97	69
85,281	81,913	**340,321**	71,451	7,166	5,109	3,781	2,690
155	149	**618**	130	13	9	7	5
128,827	123,739	**514,093**	107,935	10,824	7,717	5,711	4,064
193	186	**771**	162	16	12	9	6
15,061	14,466	**60,102**	12,619	1,265	902	668	475
830	797	**3,311**	695	70	50	37	26
39,791	38,219	**158,787**	33,338	3,343	2,384	1,764	1,255
334	320	**1,331**	279	28	20	15	11
72,253	69,400	**288,332**	60,536	6,071	4,328	3,203	2,279
584	561	**2,329**	489	49	35	26	18
1,021	981	**4,075**	855	86	61	45	32
306	294	**1,222**	257	26	18	14	10
10,056	9,659	**40,129**	8,425	845	602	446	317
71	69	**285**	60	6	4	3	2
13,979	13,427	**55,786**	11,712	1,175	837	620	441
2,451	2,354	**9,779**	2,053	206	147	109	77

Exhibit 2

Lexapro Generic Analysis - MYLAN
SHARE OF GENERIC 50%

($ in 000's)

	Contract Assumptions	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12 9/1-9/8	Sep-12 9/9-9/30	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Total 1st 6 months	Total 2nd 6 months	Full Year Total
Net Sales & Total Profit																		
Total Escitalopram Sales (Branded + Generic)			$192,106	$185,081	$184,665	$188,173	$190,798	$186,213	$50,628	$139,227	$190,376	$183,620	$195,830	$191,616	$177,435	$1,177,665	$1,078,104	$2,255,769
Branded LEXAPRO Sales		$189,739	$96,053	$28,085	$22,893	$21,333	$20,352	$17,369	$4,228	$11,626	$14,107	$11,889	$10,604	$10,179	$8,658	$210,312	$67,063	$277,375
Branded % of Total			*50%*	*15%*	*12%*	*11%*	*11%*	*9%*	*8%*	*8%*	*7%*	*6%*	*5%*	*5%*	*5%*	*18%*	*6%*	*12%*
Total SRI TRx			*15,987*	*15,390*	*15,343*	*15,623*	*15,828*	*15,436*	*6,212*	*9,317*	*15,756*	*15,185*	*16,182*	*15,790*	*14,614*	99,818	86,845	*186,663*
Branded TRx Share			5.66%	1.72%	1.40%	1.28%	1.21%	1.05%	0.94%	0.94%	0.84%	0.73%	0.61%	0.56%	0.51%	2.00%	0.68%	1.39%
Branded TRx			904	264	215	200	191	163	59	88	132	111	99	88	75	1,996	594	2,590
Branded Units			35,078	10,257	8,360	7,791	7,433	6,343	2,287	3,431	5,152	4,342	3,873	3,458	2,941	77,549	23,196	100,744
Generic Sales (Assuming Lex Px)			$96,053	$156,996	$161,773	$166,841	$170,446	$168,844	$46,400	$127,601	$176,269	$171,732	$185,226	$181,437	$168,777	$967,353	$1,011,041	$1,978,394
Substitution rate			*50%*	*85%*	*88%*	*89%*	*89%*	*91%*	*92%*	*92%*	*93%*	*94%*	*95%*	*95%*	*95%*	*82%*	*94%*	*88%*
Total SRI TRx			*15,987*	*15,390*	*15,343*	*15,623*	*15,828*	*15,436*	*6,212*	*9,317*	*15,756*	*15,185*	*16,182*	*15,790*	*14,614*	99,818	86,845	*186,663*
Generic TRx Share			5.66%	9.59%	9.91%	10.03%	10.10%	10.26%	10.37%	10.37%	10.47%	10.58%	10.70%	10.75%	10.80%	9.31%	10.63%	9.92%
Generic TRx			904	1,477	1,520	1,567	1,599	1,583	644	966	1,650	1,606	1,731	1,697	1,578	9,294	9,229	18,522
Generic Units			35,078	57,335	59,079	60,930	62,246	61,662	25,141	37,712	64,478	62,818	67,754	66,487	61,847	361,471	361,096	722,566
Generic Sales (Px Discount Mar-Sept 8)	*40%*		$57,632	$94,198	$97,064	$100,104	$102,267	$101,307	$27,840	$12,760	$17,627	$17,173	$18,523	$18,144	$16,878	$580,412	$101,104	$681,516
Generic Sales (Px Discount Sept 9 Forward)	*90%*																	
Mylan Share of Generic (Mar)	*80%*		$46,106	$56,519	$58,238	$60,063	$61,360	$60,784	$16,704	$6,380	$8,813	$8,587	$9,261	$9,072	$8,439	$359,773	$50,552	$410,326
Mylan Share of Generic (Apr-Sept 8)	*60%*																	
Mylan Share of Generic (Sept 9 Forward)	*50%*																	
Generic COGS (Lundbeck API, Forest manufacturing/packaging)			$1,673	$2,050	$2,113	$2,179	$2,226	$2,205	$899	$1,124	$1,921	$1,872	$2,019	$1,981	$1,843	$13,344	$10,761	$24,105
Total Profit on Generic			$44,433	$54,468	$56,125	$57,884	$59,135	$58,579	$15,805	$5,256	$6,892	$6,715	$7,242	$7,091	$6,596	$346,429	$39,791	$386,221
Profit Share																		
Mylan share			$26,660	$32,681	$33,675	$34,730	$35,481	$35,147	$9,483	$3,154	$4,135	$4,029	$4,345	$4,254	$3,957	$207,857	$23,875	$231,732
% of Total Profit	*60%*		*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*	*60%*
Forest share			$17,773	$21,787	$22,450	$23,154	$23,654	$23,432	$6,322	$2,102	$2,757	$2,686	$2,897	$2,836	$2,638	$138,572	$15,917	$154,488
% of Total Profit	*40%*		*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*	*40%*

Key Assumptions:

1. Market Growth - 1%
2. Total Escitalopram Sales (Branded + Generic) following generic introduction remains flat at 11.31% of SRI Market
3. Price Increase - **Branded Product Only** - 7.5% in January 2012 and 2013
4. Substitution rate - Assumed ZOLOFT rate except for higher substitution rate than ZOLOFT (38%) in month one as generic entry for ZOLOFT came in Aug 18th 2006
5. Generic Pricing - 40% discount March through September 8th; 90% September 9th onward
6. Mylan Share of Generic - 80% in March, 60% from April through September 8th; 50% September 9th onward (assumes new generics take 20% of market and Teva takes 30%)
7. COGS: API $0.045/pill ($3,000/kg, 15mg wt. avg pill strength); Forest manufacturing and packaging $0.0146/pill)

EXHIBIT 278

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FOREST LABORATORIES INC., ET AL.,)
Plaintiffs,)
vs.) C.A. No. 08-21-GMS-LPS
COBALT LABORATORIES INC., ET AL.,)
Defendants.)

VIDEOTAPED DEPOSITION OF
WALTER WOLFGANG FLEISCHHACKER, M.D.
New York, New York
Wednesday, September 9, 2009

Reported by:
Jennifer Ocampo-Guzman
JOB NO. 303128

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September 9, 2009
8:21 a.m.

Videotaped Deposition of WALTER WOLFGANG FLEISCHHACKER, M.D., held at the offices of Kirkland & Ellis, LLP, 601 Lexington Avenue, New York, New York, pursuant to subpoena, before Jennifer Ocampo-Guzman, a Notary Public of the State of New York.

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ALSO PRESENT:
JUAN TORRES, Videographer
CHARLES RYAN, J.D., Ph.D. (Forest Research)
PATRICK M. JOCHUM (Merz)

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---------- EXHIBITS ----------

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(Exhibit Fleischhacker-1, Document entitled, "Memantine in the Treatment of Senile Dementia of the Alzheimer Type," marked for identification, this date.)
(Exhibit Fleischhacker-2, Article, [German language], marked for identification, this date.)
(Demonstrative Exhibit Fleischhacker-3, Poster, Fleischhacker Exhibit 1 at page 88, "Drug administration," marked for identification, this date.)
(Demonstrative Exhibit Fleischhacker-4, Poster, Fleischhacker Exhibit 1 at page 89, marked for identification, this date.)
(Demonstrative Exhibit Fleischhacker-5, Poster, Fleischhacker Exhibit 1 at page 89, "Discussion," marked for identification, this date.)
(Demonstrative Exhibit Fleischhacker-6, Poster, Fleischhacker Exhibit 1 at page 89, "Discussion," marked for identification, this date.)
(Demonstrative Exhibit Fleischhacker-7, Poster, Fleischhacker Exhibit 1 at page 92, "Conclusions," marked for identification, this

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date.)
THE VIDEOGRAPHER: This is tape number 1 of the videotaped deposition of Dr. W. Wolfgang Fleischhacker, in the matter Forest Laboratories Inc., et al, versus Cobalt Laboratories Inc., et al., in the United States District Court, for the District of Delaware.
This deposition is being held at Kirkland & Ellis, LLP, 601 Lexington Avenue, New York, New York, on September 9, 2009, at approximately 8:21 a.m.
My name is the Juan Torres, and I am the legal video specialist.
Will counsel please introduce themselves, beginning with the party noticing this proceeding.
MR. FLATTMANN: Gerald Flattmann of Kirkland & Ellis, on behalf of the witness and on behalf of the plaintiffs, Forest Laboratories and Merz.
MR. CERRITO: Nick Cerrito, Jones Day, on behalf of the witness and Merz Pharmaceuticals.
MR. MORRIS: Greg Morris, from Kirkland & Ellis, on behalf of Plaintiffs Forest and Merz and the witness.

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DR. RYAN: Charles Ryan with Forest Laboratories.
DR. JOCHUM: Patrick Jochum with Merz Pharmaceuticals.
MR. WEINSTEIN: Louis Weinstein, with Budd Larner PC, on behalf of Dr. Reddy's laboratories.
MR. OHLY: Chris Ohly, Schiff Hardin, for Lupin.
MR. BENCHELL: Neil Benchell, with Rakoczy Molino Mazzochi Siwik, for Cobalt.
MR. CHANG: Eugene Chang, Willkie Farr & Gallagher, for Teva.
MR. CONNOLLY: Terrence Connolly, Latham & Watkins, for Orchid Pharmaceuticals.
MR. FLATTMANN: And may I ask if anyone is on the telephone line right now?
MR. BENCHELL: Actually, I am just getting an e-mail now. Apparently there is, and apparently the phone is muted, so.
MR. FLATTMANN: Oh, let's fix that. Let's unmute the phone.
Is there anyone joining us on the phone? We're doing attorney introductions, for the record.

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MS. WESTIN: Good morning, this is Lori Westin, for Mylan and GenPharm.
MR. OHLY: From California?
MS. WESTIN: From California.
MR. FLATTMANN: Okay.
THE VIDEOGRAPHER: Will the court reporter please swear in the witness.
WALTER WOLFGANG FLEISCHHACKER, M.D., called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:
EXAMINATION BY
MR. FLATTMANN:
Q. Good morning, Dr. Fleischhacker.
A. Good morning.
Q. Would you please state your full name for the record?
A. Walter Wolfgang Fleischhacker.
Q. What do you do for a living?
A. I'm a psychiatrist.
Q. Where do you work?
A. I work at the Medical University of Innsbruck.
Q. What is your position there?
A. My position there is managing director

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of the department of psychiatry and psychotherapy.
Q. And what are your principal duties and responsibilities in that role?
A. I have clinical responsibilities in patient care. I have responsibilities with regard to teaching and research.
Q. How long have you been working at Innsbruck University?
A. Thirty years.
Q. Could you please describe your research at Innsbruck University.
A. My main focus in research is psychopharmacology.
Q. What is psychopharmacology?
A. Psychopharmacology is the science and also the clinical practice of administering drugs to treat psychiatric disorders.
Q. And you mentioned that you teach as well.
What do you teach?
A. I teach psychiatry and psychopharmacology.
Q. And what type of students do you teach?
A. Medical students and also students who go for psychology Ph.D. degrees.

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Q. Let me ask you a few questions about your educational background.
Do you hold any degrees?
A. An MD.
Q. An MD. So you have a medical degree?
A. I have a medical degree.
Q. Do you have any other degrees?
A. Nope.
Q. And where did you receive your medical degree?
A. At the University of Innsbruck.
Q. Do you hold any membership in any professional associations or organizations?
A. Yes. I'm a member of the European College of Neuropsychopharmacology, of the Schizophrenia Research Society, of the Austrian Society of Psychiatry and psychotherapy. I'm a foreign correspondent fellow of the American College of Neuropsychopharmacology. I am a member of the International College of Neuropsychopharmacology.
Q. Are you on the editorial staff of any professional publications?
A. Yes. I'm on the editorial board of the Journal of Clinical Psychopharmacology, of

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A. Actually, I'm sorry, I may have mixed that up. It's the other way around.
So one of the tests measures group differences, the other test measures the long-term course of the disorder. And it's exactly the other way around than I had explained to you. I apologize.
Q. So the Wilcoxon wilcox is the long-term statistical --
A. Is the long term, and the U-Test is the one that measures the group differences.
Q. Have you used these statistical analyses in any of your other studies?
A. Before or after?
Q. Before or after.
MR. FLATTMANN: Objection, vague as to which analyses.
Q. All right. Let's take them one at a time.
Have you used the Wilcoxon-Wilcox statistical analysis in any of your other studies?
A. After we did this one?
Q. Yes.
A. Yes.
Q. Did you use it in any of the ones

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before this study, the memantine study?
A. You know, I'm not sure.
Q. How about the U-Test, have you used the U-Test statistical analysis in any studies before or after the memantine study?
A. After, yes, certainly. Before, I'm not sure.
Q. Do you currently use memantine to treat Alzheimer's patients?
A. Yes.
Q. Do you believe that memantine works to treat Alzheimer's patients today?
MR. OHLY: Objection. I object to that question.
MR. CERRITO: You can answer.
Go ahead.
A. I don't think it's a matter of belief. There is scientific evidence that it helps people with Alzheimer's disease.
Q. And when did you start prescribing memantine for Alzheimer's patients?
A. I started prescribing that shortly after it was licensed in Austria.
Q. What was it that convinced you to start prescribing memantine for Alzheimer's patients?

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A. The evidence that was available at that time.
Q. Do you recall what evidence that was?
A. Not in detail, but clinical trials that were published.
Q. What kinds of clinical trials were these?
A. They were randomized, controlled clinical trials.
Q. Do you -- earlier you mentioned that the understanding of the mechanism of action of memantine has changed over time.
Do you recall that?
A. Yes, I recall that.
Q. When you say that, the actual mechanism of action itself hasn't changed, it's just our understanding of it that's changed, right?
A. Correct.
Q. So every time you give a drug to someone, it operates the same way, regardless of whether people have discovered that interaction?
MR. FLATTMANN: I would like to hear the question one more time, please.
I need to hear the entire question.
(A portion of the record was read.)

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MR. FLATTMANN: I object to the question as lacking in foundation and vague and ambiguous. Also calling for an expert opinion.
A. Drugs given to different people generally also work in different ways in different people. As a general principle, that probably is transferable from one person to the other; but in subtle detail there may be huge intraindividual or interindividual differences.
Q. But for any particular person, every time you give that drug to them, it operates the same way, regardless of whether we understand the mechanism of action, right?
MR. FLATTMANN: Objection, vague and ambiguous, lacks foundation, calls for an expert opinion and is an incomplete hypothetical.
A. I don't think it can be stated in that way. As I stated before, there are interindividual differences in how people react to drugs.
Q. Let me ask the question a slightly different way, then.
Do you believe that, according to what you know sitting here today, that memantine is an NMDA antagonist?

EXHIBIT 279

** H I G H L Y C O N F I D E N T I A L **

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 1:15-cv-07488-CM

----------x

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION

----------x

August 29, 2017

8:49 a.m.

Videotaped Deposition of FOREST LABORATORIES, LLC; ACTAVIS, PLC; FOREST LABORATORIES, INC.; and FOREST LABORATORIES HOLDINGS LTD., by MARK DEVLIN, taken by Plaintiffs, pursuant to Rule 30(b)(6) Notice, held at the offices of Garwin Gerstein & Fisher LLP, 88 Pine Street, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

MARK DEVLIN

Q What is your understanding of that language?

A I don't know what Mr. Samoriski exactly meant with his statement.

Q I'm asking for your understanding when you read this.

A My understanding is that to transition patients to Namenda XR requires the physician to make the judgment. That's what they want the patient to be on and to write the prescription for it.

Q And you didn't understand that to mean Forest's transition of patients to XR?

MR. TOTO: Object to form.

A As I said before, my view is Forest does not transition patients. A physician does that.

Q In the next paragraph, he talks about effective communication. Do you see that?

A Yes.

Q After you received this

MARK DEVLIN

e-mail, did you talk to any of the accounts for which you had responsibility, concerning the decision that Mr. Samoriski writes about here?

A Yes. I believe I did.

Q To whom did you talk in terms of companies, not individuals?

A I believe I personally spoke with Express Scripts, silver script division of CVS Caremark, Humana. Those are three I can recall right now.

Q What did you tell Express Scripts about Forest's decision to discontinue IR?

A I think it was a general discussion about Namenda XR and the acceptance of that and that I think I asked their opinion regarding the possibility of, I guess, the approach we were considering to only sell Namenda XR, the oral solid version.

Q What did ESI say to you about that?

A ESI?

MARK DEVLIN

Q Express Scripts.

A They specifically thought it was a good business decision and said that they were happy with Namenda XR from their view.

Q What about CVS?

A CVS Caremark, I spoke with the individuals on their -- for their silver script plan which is a Medicare plan. And they were indifferent, said it wouldn't matter to them.

Q What about Humana?

A Similar story. I spoke to the Medicare Part D people at Humana. And they also were indifferent, didn't have an opinion, one way or another, as to what their situation would be if we only sold Namenda XR.

Q Did any of these three companies mention to you that they were concerned about moving patients to generic IR if IR was discontinued?

MR. TOTO: Object to form.

A Most of the discussions I

modeled, were you asking either of the recipients of this e-mail to do the modeling or make sure it was done?

A. I was suggesting that it be done.

Q. And did you follow up to see that it was done?

A. I don't recall if I did or I did not.

Q. You have no recollection after this you made any effort to find out whether it was actually modeled?

A. I know we -- I know we modeled the conversion back from Namenda XR to generic IR, but I don't -- I don't -- I didn't follow up specifically or I don't recall following up specifically on this suggestion.

Q. And do you believe that either of the recipients of your e-mail would be doing the modeling or did you expect that they would have someone else do the modeling?

A. I don't know. I don't know who on their team they might have gone to to do

the modeling or if they would have done it themselves.

Q. Okay. You can put that aside, sir.

MR. TOTO: When you get to a point, maybe a good time for a break.

MR. SORENSEN: Yeah, one more document?

MR. TOTO: Sure.

Q. If you need a break, we can stop.

A. No, I can do one more.

Q. One more document?

A. I can do one more.

Q. Fair enough.

(Devlin Exhibit 7 marked for identification.)

Q. Sir, what I have marked as Exhibit 7 is Bates numbers FRX-AT-03861621. It is titled Namenda XR Roadmap to Launch dated September 13th, 2012. Do you see that, sir?

A. I do.

Q. Have you seen this before?

A. It does not look familiar, no.

Q. If you turn to Bates page 1623.

MR. TOTO: Again, take your time to familiarize yourself with the document.

Q. Sure. It is just a page that says the word Brand Goals.

A. I see it.

MR. TOTO: I figure you are going to ask something.

MR. SORENSEN: I will.

Q. I just want to orient, take you to it.

And then the next page repeats, Brand Goals, this is Bates page that ends 1624, and under Brand Goals it says "Namenda XR is a significant brand which is expected to produce net sales over $500 million at peak. Conversion," then it says "30 percent of Rxs" -- that stands for prescriptions, correct?

A. Correct.

Q. -- "from IR in 18 months. Reverse conversion in 3 years post IR LOE," and then it has various numbers and it has a cumulative number of 30 percent.

Do you see that?

A. I do.

Q. Now, the conversion number of 30 percent of prescriptions in 18 months, do you understand that at this time that was Forest's, quote, "brand goal," at the time?

MR. TOTO: Objection, the document speaks for itself, lacks foundation.

A. Yes, it appears that the 30 percent of prescriptions from IR was a brand goal, yes, for conversion.

Q. And apart from staring at this on the page, were you familiar just in your work at Forest around this time that that was the number that Forest was setting as a goal for conversion at this time from IR to XR?

MR. TOTO: I object to form, lacks foundation.

A. Yes.

Q. If you turn -- look at the next page, Bates number 1625, it says Namenda Franchise Forecast, Net Sales in Millions.

in your role at Forest at this time? In other words, if we take the document date on the metadata as October 19th, 2012, why would you have seen this in your role at Forest at that time?

A. I may have been in a meeting where Laura Mastrosimone or someone else from the brand team presented this presentation.

Q. Are you saying you may have, or do you recall as you sit here that you actually were?

I'm just trying to understand how, you know, how specific your recollection is.

A. No, I don't -- I don't recall a specific meeting. The document looks familiar to me.

Q. I see, okay.

A. It may have been presented. I may have been present in a meeting or it may have been sent to me. I don't know.

Q. Okay, fair enough.

And on the page right after that, there is a reference to long-term

care. Do you see that?

A. Which page?

Q. This is right after the 30 percent, it is Bates page 6056.

A. Okay, yeah.

Q. And that long-term care is often abbreviated in Forest documents as LTC, correct?

A. Correct.

Q. So, for example, on Bates page 6058, you see the abbreviation LTC Physicians; do you see that?

A. I do.

Q. And that refers to long-term care physicians, correct?

A. Yes.

Q. And a significant amount of the patient population using Namenda, since it's an Alzheimer's treatment, live in long-term care facilities; is that correct?

A. I don't know how you would define significant percentage, but, yeah, there was a fair amount of use of Namenda, because it is an Alzheimer's medication, in long-term care.

Q. And Forest endeavored to study what percentage of the Namenda patient population resided in long-term care facilities, correct?

A. Yes.

Q. If you turn to the Bates page that ends 6061 of this document, it is entitled Master Timeline. Do you see that?

A. I do.

Q. This kind of timeline giving different events, is that something that you're familiar with?

A. Yes.

Q. And MCO training, what does MCO stand for?

A. Managed care organization.

Q. Okay, you can put that document aside, sir.

(Devlin Exhibit 9 marked for identification.)

Q. Sir, what I have marked as Exhibit 9 bears Bates number FRX-AT-03716706.

It is an e-mail dated March 11th, 2013 from a Lei Meng to Elizabeth

Fung, with attachment. Do you see that?

A. I do.

Q. And who is Lei Meng?

A. Lei Meng was a Forest Laboratories employee in our Business Development and Commercial Assessment Group.

Q. Is she still employed by Forest or some corporate successor?

A. Yes.

Q. Was she involved in developing forecasts for Namenda IR/XR?

A. Yes.

Q. So will you now add her to your list that you gave earlier?

A. Yes, I would.

Q. And how about Elizabeth Fung, who is she?

A. She was another person on the Brand Marketing team.

Q. Would Ms. Fung also have been involved in creating forecasts?

A. I don't know.

Q. But Lei Meng was?

A. Yes.

Q. Other than looking at this document, did you understand that these were among Forest's internal goals in trying to understand the expected conversion rate from branded IR to branded XR?

MR. TOTO: I object to form.

A. That what was Forest's goals?

Q. That what you see in front of you were among Forest's goal in doing analogue analysis?

MR. TOTO: I object to form.

A. No.

Q. I'll start again.

Did you understand that Forest was trying to identify analogues, the most appropriate analogues, get IMS data for those analogues, to project, estimate, the expected conversion of branded IR to XR?

A. Yes, that's my understanding.

Q. Okay, fair enough.

And when it says in the third bullet "factor Namenda conversion for high Namenda share of LTC (44 percent)," other than looking at this document, are you

aware of the Namenda business that went to patients in long-term care?

A. Yes.

Q. Was it approximately 44 percent at this time?

A. I thought it was lower.

Q. Okay. Do you have some reason to dispute the 44 percent number?

MR. TOTO: I object to your characterization on 44 percent number.

MR. SORENSEN: Okay.

Q. If you look at the next page, page 7, second bullet, under Methodology, "analogues business breakdown is at least somewhat similar to Namenda's percent of TRXs" -- that stands for total prescriptions? Do you see TRX?

A. Yes.

Q. Does that stand for total prescriptions?

A. Yes.

Q. -- "in long-term care (44 percent)."

Do you see that?

A. Yes.

Q. Do you have some basis to dispute that that's an accurate number at this time?

A. For percentage of prescription, no, I have no basis to dispute it. We looked at prescriptions or volume. Depending upon what you look at, those percentages could be different.

Q. And as far as you know, or -- let me start again.

If you go back to the e-mail from Julie Zaidler and the attachment, as you understand it, she sent this document in the course of her business and employment at Forest at the time, correct?

A. I don't know who Julie Zaidler is. From, you know, where it says from Julie Zaidler, it doesn't say, in parentheses, an FRX e-mail, so I don't really know who she is.

Q. But the other individuals who are receiving this document are all Forest employees, correct?

A. Correct.

Q. At the time?

A. At the time, correct.

Q. And if you would look back at page 5, it says "Questions? Contact: Julie Zaidler," and there is an extension. Does that look like a Forest extension?

MR. TOTO: I object to form.

A. I don't know.

Q. You don't know?

A. I don't know.

Q. Okay.

I may have asked this, so I apologize, but the first line of the e-mail is "Attached are the Namenda XR analogues that you requested."

This is written to Maria Theodore. Do you see that?

A. Yes.

Q. Other than looking at this e-mail, do you have any knowledge that Maria Theodore, a Forest employee at this time, was asking for data on different or newer analogues?

A. No, I don't have any knowledge.

Q. You can put that aside, sir.

(Devlin Exhibit 11 marked for

19, it says 30 percent.

If you flip over to the next page and you keep going on line 64, the numbers start dropping. Do you see that? 29 percent, 28 percent, and so forth. This is in black and white. Do you see that?

A. On the page after this --

Q. After the yellow.

A. -- column 18?

Q. Yes, yes. Instead of month 18, month 19 -- on the page that you were looking at with yellow, month 18 says 30 percent, month 19 says 30 percent.

Do you see that?

A. Yes.

Q. All right.

Now, when you turn the page, now this is all black and white, starting with month 21 and 22 and so forth, that same line, 64, starts at 29 percent, and as you move from left to right, it starts to drop. Do you see that?

A. Yes.

Q. You can put that document aside, sir.

MR. TOTO: I move to strike all testimony related to Exhibit 11 based on the fact that the witness testified he cannot read portions of it because the font was too small.

Q. You can put that aside, sir.

(Devlin Exhibit 12 marked for identification.)

Q. Sir, what I have marked as Exhibit 12 bears Bates number FRX-AT-01775302. It is titled Namenda IR to XR Conversion Project, Working Draft, June 2013. Do you see that, sir?

A. I do.

Q. Have you seen this document before?

A. Parts of it look familiar.

Q. So do you believe you've seen the entire document or you've seen portions of this in other documents?

A. I don't know.

Q. So if you turn to the third page of the document, Bates number ending 5304, it is titled Three Potential Scenarios for Namenda IR Commercial

Availability Post XR Launch are Being Considered. Do you see that?

A. I do.

Q. And underneath that, it says Conventional, Withdrawal, and Limited Distribution. Do you see that?

A. Yes.

Q. Other than looking at this document, are these terms familiar to you, that is, the terms Conventional, Withdrawal and Limited Distribution, as it relates to Namenda?

A. Yes.

Q. So for Conventional, it says "both Namenda IR and Namenda XR marketed, 'soft switch.'"

Do you see that?

A. Yes.

Q. Other than looking at this document are you familiar with the term "soft switch"?

A. Yes.

Q. And what does it mean to you?

A. It is a term that is just referring to traditional sales and

marketing effort to convince a physician to prescribe one product over another.

Q. But as indicated in this document, it would also mean that both branded IR and XR are being sold at the same time, correct?

A. Yes.

Q. Now, we go to Withdrawal, underneath that, it says "Namenda withdrawn from the market, 'hard switch.'" Do you see that?

A. Yes.

Q. Is the term "hard switch" something you're familiar with?

A. Yes.

Q. And what do you understand it to mean?

A. Is that both of those products would not be widely available.

Q. So that under the Withdrawal scenario, once Namenda XR was launched, IR, branded IR would be withdrawn, correct?

MR. TOTO: I object to form, lacks foundation.

A. Correct.

Q. And then to the right of that, we have Limited Distribution, with a description underneath it.

Other than the description that you see in front of you, do you have any other understanding of what Limited Distribution refers to?

MR. TOTO: I object to form.

A. What was the question, again?

Q. In other words, under Limited Distribution, it says -- it has two bullets. Do you see those bullets?

A. I do.

Q. Now, other than what you see in front of you, do you have any other understanding of what the term Limited Distribution means in reference to Namenda?

MR. TOTO: I object to form, lacks foundation.

A. Yes.

Q. What other meaning do you understand it to have?

A. Well, insurance companies oftentimes have limited retail distribution networks, and oftentimes limited

distribution refers to that as well.

Q. Well, in this time period of June 2013, I gather Forest was considering a limited distribution option for Namenda IR; is that correct?

A. Yes.

Q. And what did you -- I'm sorry, were you finished?

A. Yes, I was finished.

Q. And what did you understand Forest was considering under the rubric of limited distribution for IR?

A. We were considering having Namenda IR be available through a specialty pharmacy or mail order pharmacy operation.

Q. And is that ultimately something that Forest did?

A. We did not.

Q. And the two bullets under Limited Distribution on this page, do those comport with your understanding of part of what Limited Distribution meant?

A. Yes.

Q. Now, below that there is a box that says Through FY 2014. FY refers to

fiscal year, correct?

A. Yes.

Q. What is Forest's fiscal year, or what was it at this time? Was it just the calendar year or was it some other period?

A. I'm not sure for this time period of June 2013. At one point our fiscal year definition changed in the transition from Forest to Actavis.

Q. And when was that transition, again?

A. I think that was -- I think that acquisition closed in July of '14, but I'm not sure when we moved to the fiscal year change from one period to a calendar year. It was at one point April to March was a fiscal year and then it moved to calendar year.

Q. Is it currently calendar year?

A. It is currently calendar year.

Q. You don't know when that change occurred?

A. I'm not sure. I don't know the exact date, no.

Q. The next bullet says "Decision: Withdrawal or Limited Distribution or Conventional option to be based on degree of success in converting Namenda IR to Namenda XR."

Do you see that?

A. I do.

Q. Does that mean that the decision of which to choose would be the one that has the highest degree of success in converting IR to XR?

A. I think it means the decision would be based on how Namenda XR was doing in the market at the time.

Q. All right, you can put that document aside, sir.

(Devlin Exhibit 13 marked for identification.)

Q. So this document which I have marked as Devlin Exhibit 13 bears Bates number FRX-AT-01593279.

The front of it is an e-mail chain, at the very top is an e-mail from William Meury to a number of individuals, including you, dated August 21, 2013.

discontinuation of IR is going to make the conversion happen, as he says, "without any effort on MHA's part," correct?

A. Yeah, that's what he's saying.

Q. And then on the next page, that is Bates page 7889 at the top, he says, at least as of the date of this e-mail, "The IR/XR conversion of MHA, Forest's largest LTC customer collectively, is a pathetic 6 percent and the independent LTC pharmacies have had every incentive to switch to XR, including a rebate since launch. The conversion rate is half the national average and half the retail conversion rate, and we know retail is doing nothing to switch."

Do you see that? And it continues.

A. Yes.

Q. Now, your response to him at the top of Bates page 7888 is "As I said in my message, we will discuss on Tuesday, so No Need for further e-mails on this subject please."

Do you see that?

A. I do.

Q. And then you have underlined and capitalized "No Need." Do you see that?

A. I do.

Q. Is that because you didn't want an e-mail record created about this subject?

A. No.

MR. TOTO: Objection, lacks foundation, argumentative.

Q. It's a question. Go ahead.

A. The answer is no.

MR. TOTO: It's an objectionable question.

Q. So why did you capitalize and underscore "No Need"?

A. Because I was frustrated with Don Robertson's response, and he didn't fully understand what was going on with MHA, that customer, and the reason the conversion was lower there was because they were not doing what we were paying them to do, which we subsequently took care of and conversion accelerated as a result.

Q. You can put that aside, sir.

(Devlin Exhibit 24 marked for identification.)

Q. Sir, what I have marked as Exhibit 24 bears Bates number FRX-AT-016 -- let me start again -- FRX-AT-01630961.

Do you see that, sir?

A. Yes.

Q. It's an e-mail chain dated February 14th, 2014.

At the top, it is from William Meury to you, copied to Jerry Lynch, and below that is an e-mail from you to Mr. Meury, copied to Jerry Lynch.

And on the other page, the second page of the document, the e-mail chain starts with an e-mail from Jerry Lynch to Mark -- to you, copied to Mr. Meury. Do you see that?

A. Yes, I see it.

Q. So the e-mail chain starts on Bates page 0962 with Mr. Lynch, who I believe you identified earlier; is that correct?

A. Yes.

Q. "Mark," asking you, "What plans do you think we need to contact Tuesday concerning XR? What's the plan for the RAMs and the NAMs the first part of next week?" And it continues.

Do you see that?

A. Yeah. I'm just reading the rest of that.

Q. No problem. Go ahead.

(Witness perusing document.)

A. Okay.

Q. And your response on Bates page 0961 is "I spoke with Optum last week." What is Optum?

A. Optum is the pharmacy benefit management division of United Healthcare.

Q. "Will send Mike Anderson the press release and call him next week."

Who is Mike Anderson?

A. He is a vice president at Optum, or he was at the time.

Q. "Will do the same" -- "Will do same with Humana and Silverscript."

What are Humana and Silverscript?

A. Humana is a health plan. Silverscript is also a Medicare Part D health plan under CVS.
Q. And just for clarification, when you say Medicaid Part D, what did you mean by that?
A. Medicare.
Q. Medicare. What is that?
A. It's the, in the Medicare program, the Part D component of it is what provides prescription drug coverage for Medicare beneficiaries.
Q. Then you say "NAMs and RAMs." That's, again, just to be clear, national account managers and regional account managers?
A. That's correct.
Q. "NAMs and RAMs were informed yesterday and I coached them to speak to their accounts."
Do you see that?
A. Yes, I see that.
Q. When you say in this e-mail "I coached them to speak to their accounts," you mean you spoke to the NAMs and RAMs to

in turn then speak to their customers, or who exactly are you talking about?
A. Yeah, so they would -- the RAMs and NAMs, their accounts were Humana and Silverscript and others like that.
Q. Oh, I see. So you talked to other Forest people, and, as you put it, coached them to then talk to the outside customers; is that correct?
A. Correct.
Q. And then you continue on about MHA, and you say "Have a plan for them. Would be taking admin fee and chargeback percentage and move some of that to rebate for their member pharmacies to help convert to XR."
Do you see that?
A. Yes.
Q. Good idea, I think.
"Draws attn" -- that means attention, correct?
A. Correct.
Q. -- "to XR and saves us some money. MHA may not like it, but they're doing little for us anyway."

The plan that you are referring to is the same plan that earlier e-mail chain was talking about, correct?
A. Correct.
Q. You can put that aside, sir.
(Devlin Exhibit 25 marked for identification.)
Q. Sir, what I have marked as Exhibit 25 bears Bates number FRX-AT-03793470.
It is titled Namenda Tablets, Discontinuation of Sale, Sales Force Training, Webex - Tuesday, February 18, 2014.
Do you see that, sir?
A. Yes, I see that.
Q. Have you seen this document before?
A. I don't believe so.
Q. Did you have any involvement in training of the sales force as of this date going forward with respect to the discontinuation plan for IR?
A. No, I did not.
Q. Do you know who would have been

in charge of that particular area?
A. Yes.
Q. Who?
A. Jerry Lynch.
Q. And did you have day to day encounters with Jerry Lynch around this time?
A. Yes.
Q. And as part of your work at Forest dealing with your clients and the RAMs and the NAMs, I think it is, that you were testifying about earlier, did you also talk with Jerry Lynch about what he was doing with the sales force folks in terms of communicating and getting the message out about discontinuation of IR?
A. Sometimes, yes, not day to day, but sometimes.
Q. If you could turn to slide 6 for a second, please. Tell me when you're there, sir. It is Bates page 3475, internal page 6.
A. 3475 Bates number?
Q. 3475, yes.
A. Okay, I got it.

Q. It states "We are communicating the withdrawal immediately and over the next six months."

Then it states "Over 150,000 physicians will receive letters, e-mails and all our messages. Over 200,000 pharmacists will receive letters, e-mails and chain announcements." And then it continues. Do you see that?

A. I do.

Q. Other than looking at this document, were you familiar with the scope of the communication plan and program that Forest initiated with respect to -- with respect to withdrawal of IR?

A. Like I said before, I knew we had a broad communication campaign. I wasn't familiar with the exact scope of numbers, 150, 200,000. I just knew we were communicating to all stakeholders.

Q. All right. You can put that document aside, sir.

Just one more question on that document, 3494, if you look at Bates page 3494. Tell me when you're there, sir.

A. Okay.

Q. Are you there?

Do you know what POA stands for?

A. Plan of action.

Q. Thank you. All right. You can put that document aside.

Do you know what the abbreviation SCRAM stands for, S-C-R-A-M?

A. Yes.

Q. What does it stand for?

A. I believe it is senior care regional account manager.

Q. And would you have had any responsibility communicating with them?

A. Yeah, I may have.

(Devlin Exhibit 26 marked for identification.)

Q. We have marked as Exhibit 26, it bears Bates number FRX-AT-03801380. It's an e-mail from a Ermie Fan dated February 18th, 2014, with attachment, and it starts with "Dear SCRAM Team," SCRAM, all capital letters.

Do you see that, sir?

A. I see it.

Q. Now looking at this document and seeing SCRAM, do you understand that SCRAM has the meaning you just testified to?

A. Yes.

Q. And who is Ermie Fan?

A. It is Emmie Fan.

Q. I'm sorry, Emmie.

A. That's all right. She worked on the Namenda brand team.

Q. Were you familiar with this kind of communication attached going to skilled nursing faculty staff?

MR. TOTO: With this particular one?

MR. SORENSEN: Or something like it.

MR. TOTO: I object to form.

A. Yes, I'm familiar with it.

Q. So she writes to others -- well, who are these people who are the recipients of this? Do they have a particular job in common with each other?

A. Yeah, they were the SCRAMs.

Q. Is that the to -- I'm sorry, go ahead.

A. Under to, the SCRAMs were Cloonan, Roth, Desautels, Bley managed them, and Sheldon managed Bley.

Q. And the CCs, are they different types of folks?

A. I'm not really sure who Jade Cantor is. Jacqueline D'Onofrio was on the brand team. Jason Wong was in the Payor Marketing Group, as was Ellis and Williams. Peter Maher I believe was on the brand team, and Will Kane, brand team.

Q. In the body of this, it says, under "Dear SCRAM Team," there is a paragraph that starts "Furthermore."

"Furthermore, the Namenda Brand Team has begun sending out communications to a wide range of HCPs and caregivers, including the LTC audience, starting today."

What does HCP stand for?

A. Healthcare practitioner.

Q. Other than dealing with your folks and clients, the managed healthcare

being reported inside Forest?
A. No.
Q. You weren't aware of it?
A. No, I was aware that we were seeing rapid increases in our Namenda XR business primarily because of the changes we made, improvements we made in Medicare Part D access and the changes that we made in terms of sales force compensation, sales force promotion. That's what I recall.
Q. I see.
Were you copied on reports following February -- let me start again.
Following the February 14th announcement -- let me start one more time.
Following the February 2014 announcement of the withdrawal of IR, were you regularly copied on internal Forest reports tracking the transition from IR to XR?
A. Before that date as well, yes, and after that date.
Q. Right. I'm just focused on after that date. You were copied on reports after that date?

A. Yes.
Q. You can put that aside, sir.
(Devlin Exhibit 30 marked for identification.)
Q. Sir, I have marked as Exhibit 30, it's a document Bates numbered FRX-AT-04038657. It has a metadata appendix attached to it. The metadata appendix states a document date of and a creation date of April 29th, 2014.
Do you see that, sir?
A. Yes.
Q. And it says "File Name: SCC Notes 4-30." Sender/author is named Julie Snyder. Do you see that?
A. Yes.
Q. Julie Snyder, that's someone you identified earlier, correct?
A. Correct.
Q. And what does SCC stand for; do you know?
A. Senior Commercial Committee.
Q. And what is that?
A. It's a -- it's a committee that was established by Bill Meury of a bunch of

senior people in the various brand teams as well as Sales, Managed Markets, Compliance and --
Q. I'm sorry?
A. Compliance, and other departments that were involved in commercialization of our products.
Q. And was the SCC something that preexisted -- well, let me start again.
Do you know when the SCC first came into existence?
A. I don't recall, no.
Q. Do you know how many members it had, 2, 10, 20?
A. It varied from meeting to meeting. It was not a set committee.
Q. Then the attached notes talks about performance. Number 1, it says "Conversion remains on the upswing."
Do you see that?
A. Yes.
Q. Number 2, below that, it says "New Namenda XR writers are over 1,000 per week." Below that, it says "Was trending around 700 or so for several weeks/months

and now has increased each week since end of February and is at over 1,000 new XR writers per week."
Do you see that?
A. I do.
Q. Then down below that, under Driving Conversion, it says "Just to touch on a few initiatives that will help us continue to drive conversion to XR."
Underneath, it says that -- underneath that, it says "The discontinuation communications continue to go out to physicians, caregivers and pharmacies weekly (caregivers) and monthly (physicians)."
Do you see that?
A. Yes, I see that.
Q. All right. You can put that aside, sir.
MR. SORENSEN: Let me take a short break. I'm very close to being done.
THE VIDEOGRAPHER: We are going off the record at 2:10 p.m.
(Recess taken.)
(Devlin Exhibit 31 marked for

A. Yes.
Q. Then if you scroll to the right there, the second-year total, it shows over $48 million of profit share for Forest in the second year under this Lexapro generic analysis, correct, sir?
A. Yes.
Q. And you have no reason to doubt the accuracy of this spreadsheet, correct?
A. No reason to doubt it.
Q. Okay. Switching topics, throughout your testimony today, a couple of times you used the term "access." Do you recall that?
A. Yes.
Q. You talked about Part D access and plan access. Do you recall that?
A. Yes.
Q. Can you explain what you mean by access?
A. Yeah. Access is a term that refers to formulary coverage, and, you know, the health plans and payors generally are in commercial markets or Medicare Part D, as the case with Namenda, because they

had a large percentage of the business, a large majority that is paid for through the Medicare Part D program, and there's just a small number of approved plan sponsors that we negotiate with for formulary coverage or access to our products.
If you don't have that access, you get literally no business in Medicare. And if you have that access, you get a lot of business. So you have to, in order to gain that access, you have to negotiate and discount your price, and those companies are very formidable negotiators. That's their sole job, is to negotiate the lowest price possible for them and the highest discounts or rebates back from the manufacturer.
Q. And did you in fact negotiate with these plans to gain access for Namenda XR?
A. We did. We did. They were -- those plans, the access and our success came on over time, and the largest Medicare plan sponsor we were able to gain access in January of 2014, which had a large impact

on our Namenda XR uptake.
Q. And who was that plan?
A. That was United Healthcare AARP, some may call it Optum, you may see it Optum in the spreadsheet, that's the PBM, but it is all owned by United Healthcare, which has the large majority of Medicare beneficiaries.
Q. Can you describe how the concept of access is related to formulary coverage?
MR. SORENSEN: I will just note an objection. This is outside the scope of the 30(b)(6). But go ahead.
MR. TOTO: It is certainly in the scope of what you asked him. Go ahead.
MR. SORENSEN: I disagree with that, too. I'm not stopping you from testifying, I'm just noting objections. Go ahead.
A. Yeah, so those companies such as United AARP or Silverscript or Humana that I had testified to maintain a formulary, and there can be products on that formulary that are preferred by that

plan sponsor, and preferred means that's the product that they receive the best price for, the product that they then charge the lowest out-of-pocket co-pay for the patient, or they can have a product that will be nonpreferred brand, which will have a higher co-pay for the patient.
They can put restrictions in place and barriers to physicians prescribing one product over another through generic step requirements at the point of sale, prior authorizations from physicians, or they can choose to simply not cover the product and force the patient, the Medicare patient to pay full price and reject it.
Q. Do plans negotiate for preferential pricing in the form of discounts in return for preferential formulary placement?
A. Yes.
MR. SORENSEN: Same objections. Go ahead.
A. Yes, they do.
Q. And did you in fact have those

irrelevant. We never -- we never limited physician or patient choice to IR, XR, any form of Namenda, memantine. We were not allowed -- we were prevented from implementing any withdrawal, so it becomes irrelevant.

Q. And do you recall there were questions, and in this document there was something called an acceleration factor?

A. Yes, Counselor had asked me about that.

Q. Do you believe the February 14th announcement of the then plan to withdraw Namenda IR caused an acceleration in conversion?

MR. SORENSEN: Objection, leading. Objection, this witness has already demonstrated he can't answer that question with knowledge, he is an inadequate witness. But go ahead.

A. Well, I object to what the Counselor just said. I think I have a high degree of competence about my job responsibility, as evidenced by my record over 30 years.

And in my estimation, with the majority of the market being in Medicare Part D and the largest player in Medicare Part D restricting access to Namenda XR prior to January of 2014, we had a slower time then in getting business.

Once we changed that and opened up preferred brand low co-pay access at United Healthcare in January of 2014, that was a major accelerant to our conversion. That along with the sales force changes, putting more resources, efforts, and changing the sales force compensation to 100 percent on the Namenda XR, allowed us to optimize that message and the reimbursement and formulary coverage, and those were catalysts and accelerants that, in my estimation, were responsible for the increase in conversion rate.

And the other thing, I'm going to say it --

Q. Go ahead.

A. It is part of my testimony, Namenda XR was an innovative product improvement. It was memantine dosed once a

day, and we specifically priced it at a lower price to payors and obtained formulary access so the price out of pocket for the patient was the same or less than Namenda IR.

It was a fantastic product. We put a lot of money, effort and resources behind the conversion in how we promoted it and how we priced it, and for every prescription that we moved from Namenda IR to Namenda XR, it was a lower price and we didn't make as much money, but the patients and caregivers benefited because it was convenient.

That was part of the progression and the story and the innovation of the molecule, of memantine. We started with evidence and data that told us combination therapy was more effective than any product used by itself, and so we launched originally with twice-a-day memantine, which is Namenda IR. We innovated and improved that to make it more convenient in once-a-day dosing in Namenda XR, and ultimately launched the fixed-dose

combination, which, as I stated, the clinical evidence supports that as the treatment standard, and that was donepezil and memantine once a day in one pill, the ultimate convenience for the caregiver and the patient, and we did it at pricing for Namenda XR and Namzaric that was less than Namenda IR.

MR. SORENSEN: Move to strike that entire speech as nonresponsive and beyond the scope.

(Devlin Exhibit 37 marked for identification.)

Q. Do you have Exhibit 37 in front of you, sir?

MR. TOTO: And I oppose the motion to strike.

Q. Do you have that exhibit in front of you?

A. I do.

Q. You see this is an e-mail chain, the top e-mail is dated December 18th, 2013?

A. Yes.

Q. Now, by definition, that's just

prior to the January or early 2014 period that you just mentioned, correct?

A. Correct.

Q. And if you go to the attachment to the e-mail chain, you see the heading says "Great News! Key Namenda XR Wins: Four New Formularies Added."

Do you see that?

A. I do.

Q. And you received this e-mail and attachment in the ordinary course of business; is that correct?

A. That's correct.

Q. And can you explain what this attachment is summarizing?

A. Yeah, it's an announcement to the sales team. It is summarizing the Medicare Part D formulary coverage that changed as of January 1st, 2014, and the national accounts listed down the left side of the table of the document are in descending order of the importance of those Medicare Part D plan sponsors or health plans in terms of the percentage of market volume that they account for.

And so this document is speaking to the changes and the improvements in access that my team was able to generate through negotiations and heavy discounts to these health plans to where we were able to gain preferred brand access for Namenda XR with Optum/United Healthcare AARP, which is the largest Part D plan sponsor, representing over 25 percent of all volume for Namenda IR.

We also gained access at Aetna, WellPoint Anthem and Prime Therapeutics, which are also strong Part D plan sponsors, in the top ten list of all those plan sponsors. So it was a major change in access, and we were announcing that to the sales force.

Q. Based on your experience and your work in this area, did these wins accelerate conversion to Namenda XR from Namenda IR?

MR. SORENSEN: Objection, leading. Objection, beyond the scope.

A. Yes, without a doubt.

Q. Would those -- would that

acceleration be felt immediately as of January 1st, 2014 or would it accelerate over time?

MR. SORENSEN: Same objections.

A. There usually is -- it could be a few weeks or a month or so lag. It's not precise to the first day of the month.

Medicare patients oftentimes will move in and out of plans or change plans. There is a little bit of disruption, sometimes confusion at the change of the benefit year, which is January 1st. Sometimes there are deductibles that the patients have to pay and work through in the early couple of months.

So there could be a little bit of a lag in terms of when you start to see effect, not much, but --

Q. Okay. Now, Mr. Sorensen asked you a lot of questions about the period 2014 and earlier, right?

A. Yes.

Q. He didn't really ask you any questions about after the injunction, in

other words, you know, after December 2014 into 2015; is that right?

MR. SORENSEN: Objection, leading. Go ahead.

A. That's about right.

MR. TOTO: I think the record will reflect that.

MR. SORENSEN: It doesn't make it not leading.

Q. Now, after the injunction issued, is there any reason that a patient that was on XR at that point in time couldn't switch back to Namenda IR prior to the loss of exclusivity of Namenda IR?

MR. SORENSEN: Objection, leading, beyond the scope.

A. No. I think as I testified before, the patients had, and physicians, had the choice, they could have changed from XR back to IR if they wanted to, or IR to XR, both were available, there was no -- there was no withdrawal. There was no limited distribution or restriction of any kind.

Q. After the injunction issued,

A. Yes.
Q. And did Forest make some effort to send out communications to all its stakeholders telling them about the lawsuit by the New York Attorney General?
A. I don't recall if we sent out letters to stakeholders informing them. I recall having conversations with my customers about it.
Q. My question was, did it send out thousands and thousands of e-mails and other forms of communication announcing that the New York Attorney General had sued it?
A. No, I'm not aware of that.
Q. The injunction that you were asked about was issued when?
A. I believe that was in December of 2014.
Q. So approximately what, ten months or so after the announcement of the withdrawal of IR, correct?
MR. TOTO: I object to form, assumes facts, lacks foundation.
Q. Well, you testified about an

injunction, correct?
A. Correct.
Q. You also testified earlier about a press release announcing Forest's announcement of the withdrawal of IR which was dated in February 2014, correct?
A. Correct.
Q. The difference between, in days, between February 2014 and December 2014, is approximately ten months, correct?
A. Correct.
MR. TOTO: Your prior question said withdrawal, which we established never happened, so try to ask a precise question, Counsel.
MR. SORENSEN: Move to strike your commentary and testimony, Counselor.
Q. Now, after Judge Sweet's opinion issuing the injunction, we can take a step back, have you ever read Judge Sweet's opinion?
A. His complete opinion, I do not believe I have read that.
Q. Did Forest make any effort to send Judge Sweet's complete opinion to its

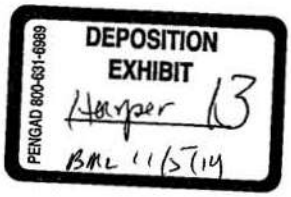
thousands of potential customers -- let me start again.
Did Forest make any effort to distribute copies of Judge Sweet's opinion to its customers?
MR. TOTO: Objection, relevance.
Q. Go ahead.
A. Not to my knowledge.
Q. In communicating with customers/stakeholders after the injunction was issued, isn't it correct that Forest noted in such letters that it was appealing that decision?
A. In such letters to whom?
Q. To -- well, I could show you some of them, and I guess I will if you don't remember this, but in sending out letters to stakeholders of various types, didn't Forest note that it was appealing the injunction?
MR. TOTO: We have to clarify the time frame here, because that's not clear.
Q. Can you answer that question?

MR. TOTO: Vague as to time.
A. I don't -- I don't know about the document. I will be happy to look at it.
Q. Okay. I will show you something about that.
(Devlin Exhibit 38 marked for identification.)
Q. Sir, I have marked as Exhibit 38 a document that bears Bates number FRX-AT-04288486.
It's an e-mail and attachment dated January 13th, 2015. Do you see that?
A. Yes, I see it.
Q. And you see attached to this is two form letters. If you look at Bates page 8490, "Dear Customer."
Tell me when you're there, sir.
A. I am there.
Q. It says "Dear Customer: Forest Laboratories, a wholly-owned subsidary of Actavis, Inc., plans to continue the sale of Namenda (memantine HCL) tablets in accordance with a court order, which we are appealing."

EXHIBIT 282

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK Plaintiff, v. ACTAVIS, PLC et al, Defendants.	CASE NO. 14-CV-7473 (RWS)



DECLARATION OF

EXHIBIT 285

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IN RE: NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION	C.A. 1:15-cv-07488-CM

** HIGHLY CONFIDENTIAL **

Videotaped oral deposition of NATHAN HERMANN, MD, called by the Forest Entity Defendants herein, held before a stenographic court reporter at the offices of Lenczner Slaght Royce Smith Griffin LLP, 130 Adelaide St. West, Ste. 2500, Toronto, Ontario, on Thursday, the 2nd day of November, 2017, at 9:00 a.m.

[redacted]

You would agree with me that those words don't appear here on page 8 in the construction of "treatment of cerebral ischemia," right? By "those words," I mean "achieving therapeutic effects."

A. So, "treatment of cerebral ischemia" and "antagonistic intervention with regard to NMDA receptor channels," if you look at claim 7, "reconstructed" -- or, sorry, the construction on point 7: (as read)

"The term 'imbalance of neuronal stimulation after -- excuse me -- after Alzheimer's disease' means a pathophysiological situation

characterized by an excessive inflow of calcium through the NMDA receptor channel."

(Query by reporter)

Sorry.

(Query by reporter)

Sorry. (as read)

"The term 'imbalance of neuronal stimulation after Alzheimer's disease' in claim 17 means a pathophysiological situation characterized by an excessive inflow of calcium through the NMDA receptor channels after Alzheimer's disease."

And then goes on to state that "the term imbalance of neuronal stimulation" -- so these are, again, using the same terms after Alzheimer's disease in claim 17: (as read)

"-- means an antagonistic intervention with regard to the excessive inflow of calcium through NMDA receptor channels after Alzheimer's disease."

The fact that he continuously refers to

Alzheimer's disease here is to me an indication that this is for a therapeutic benefit.

Q. Mm-hm. Does the same hold true for the claim term "effective amount"?

A. It would be an "effective amount" to treat Alzheimer's disease by antagonizing the NMDA receptor.

Q. Mm-hm. So "achieving therapeutic effects," that's part of "effective amount" as well?

A. Yes.

Q. Okay. Now, you moved over to the claim term --

A. Actually -- sorry, to interrupt, but if you look at the "effective amount" term, he -- the constructed claim says "an amount shown to cause improvement in comparison to placebo."

Q. Mm-hm?

A. So there's clearly a linkage of "effective amount" to improvement.

Q. Mm-hm. And the --

A. Or to therapeutic effect.

Q. Okay. Now, I was asking you about the term "treatment of cerebral ischemia." And you started answering me with reference to the term "imbalance of neuronal stimulation after Alzheimer's

disease."

Now, that term "imbalance of neuronal stimulation after Alzheimer's disease," that's not one of the terms you identified in paragraph 33 of your report as non-infringed, right? I'm in paragraph 33 now, Dr. Herrmann, not 36. I think it's set out more clearly there in 33. 33 says: (as read)

"Forest wouldn't have been able to prove that Mylan infringed three claim terms. Those terms were "the prevention or treatment of cerebral ischemia," the "treatment of cerebral ischemia," and the 'treatment of neuronal stimulation after Alzheimer's disease.'"

Right? Those are the three terms you identified in paragraph 33, correct?

A. Correct.

[redacted]

EXHIBIT
287

** H I G H L Y C O N F I D E N T I A L **

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 1:15-cv-07488-CM

----------x

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION

----------x

October 26, 2017

8:58 a.m.

Videotaped Deposition of GEORGE W. JOHNSTON, JR., taken by Defendants, pursuant to Notice, held at the offices of Gibbons, P.C., One Gateway Center, Newark, New Jersey, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New Jersey.

[redacted]

Q. Okay.
A. Fair enough?
Q. I understand your position.
A. Sounds good.

[redacted]

Q. And enablement is a conclusion of law, right?

A. As I understand it, yes. But, again, for clarity, we had two enablement arguments. One was the unproven hypothesis, and the other one was did they enable the full scope.
Q. I got it.
A. And I assume you are talking about the unproven hypothesis approach that we have articulated in this report, in my report.
Q. Well, all I've asked you so far is just whether enablement is a conclusion of law.
A. Okay.
Q. And your recollection is that it is, right?
A. Right.
Q. So when you are opining that Mylan was likely to prevail on enablement, you are reaching a legal conclusion there, right?
MR. CHORUSH: Objection.
A. No, I don't think so.
Q. Why not?
A. I'm going to leave that to the

judge.
What I'm suggesting is, again, I go back to what it is I was asked to do, I was asked to basically handicap for management of each one of these companies what's the likelihood of success at the time of settlement, and whether the judge agrees with me or not is really not relevant.
The whole point is what I felt as a reasonable patent attorney sitting in a room with management and advising them as their chief patent counsel, and based upon that, my assessment simply was that for both enablement arguments, since we're not speaking for one of them, that both of them were at 60 percent, and I hope I got the numbers right this time.
Q. I don't even remember, to be honest with you.
But I guess so we are in that, let's pretend we are in that board room, right, and this hypothetical reasonable and competent patent lawyer is advising the management of either Forest or Mylan about

the likelihood of success on enablement, okay?
A. Fair enough.
Q. They are advising their clients on the likelihood that a court will reach a particular legal conclusion?
A. No. They are asking for my opinion based upon my professional judgment, what's the likelihood of success.
Q. And success means which way the Court comes out?
A. That's fair. That's fair.
Q. And on enablement, it's a question of law, so it is the likelihood of success with regard to a particular legal conclusion, right?
A. Well, it's applying the law to the facts and to the differences in the facts between the two parties, and then the additional secret sauce of my putting my professional judgment into the mix to come out with a percentage.
Q. I understand.

[redacted]

[redacted]

Q. Okay. Do you think you are more qualified than Judge McKelvie to opine on the likely outcome of the '703 patent litigation were there a trial?

A. Let me, if you don't mind, let me rephrase that a little bit based on what I was asked to do.

Going back to what I was asked to do is to consider what a reasonable patent attorney would do to come up with some sort of a quantifiable number in terms of overall likelihood of success, which could be communicated to the client, either of the two litigants, at the time of settlement. And I do think -- I know that

I would be more qualified than Judge McKelvie because that's what I did at Roche. That was one of the aspects that was my job for 16 years.

Q. You don't think Judge McKelvie has extensive experience counseling clients on the potential outcome of a pending patent litigation?

A. Well, let's see what he says.

Q. I don't think we have marked his report as an exhibit yet, so can you answer that without looking at his report?

A. If you want me to, but I prefer to have the best information in front of me.

Q. Let's try for now to do it without his report.

A. Okay. And if you would be gracious enough to repeat the question.

Q. Sure. The question was you don't think Judge McKelvie has extensive experience counseling clients on the potential outcome of a pending patent litigation?

A. Well, I understand he worked at

Covington & Burling for a number of years. I don't know specifically how many clients he was involved with at that time as related to patent litigations. I don't know if his clients asked him to opine on those type of things. Normally those questions are handled by inside counsel. They are the type of questions that a chief patent counsel would be required to provide information to senior management.

Q. Okay.

A. So I guess the answer is no, I think I would be better qualified with regard to that specific issue.

Q. Okay. Can you remind me, sir, of your undergraduate degree?

A. Yeah. I received a bachelor of engineering, concentration in chemical engineering, from Stevens Institute of Technology in Hoboken.

Q. Do you think your technical background in terms of your undergraduate degree makes you better suited than Judge McKelvie to opine on the issues in this case?

A. And "these issues," we are talking about likelihood of success, just to make sure we're on the same page?

Q. Yes.

A. I do, in conjunction with my experience of 36 years at Hoffmann-LaRoche interfacing on a regular basis with the scientists, yes. My understanding is, and, again, without looking at the report, that Judge McKelvie has no scientific background whatsoever.

Q. And the judge who would have decided the '703 patent case did not have a technical background either, did he?

A. Judge Sleet?

Q. Yes.

A. I don't know. I just don't know.

[redacted]

[redacted]

Q. I'm going to ask you a couple of similar questions though.

A. Sure.

Q. Would you agree with me that you did not have the specialized technical expertise required to opine on what a person of ordinary skill in the art understood about memantine in 1989?

A. Let me just clarify. Again, it goes back to why I was there, not to be a technical expert, but review the evidence established by the technical experts and make a determination of what a reasonable patent attorney would do.

Now, probably you are going to ask me similar questions, so instead of me repeating that each time, if you do ask me similar questions, please consider that that's the thrust, that I had a different

role than that of the technical experts. I had a very focused role in terms of what a reasonable patent attorney, often considered, say, a chief patent counsel, because we did it all the time, would have perceived as the likelihood of success at the time of settlement.

Q. And one of the issues on which you rendered an opinion as to the relative likelihood of success of Forest and Mylan was the issue of infringement, right?

A. Yes, I did.

Q. And you would agree with me that if the '703 patent litigation had gone to trial it would have been technical experts that testified on the issues of infringement, correct?

A. Yes, technical experts would be the ones who presented the evidence to Judge Sleet to make a determination on.

Q. The same with validity, correct?

A. Yes.

Q. And your expertise, sir, is patent law; is that correct?

MR. CHORUSH: Objection.

A. Patent law -- I've got to slow down -- patent law, licensing, my expertise based upon being a chief patent counsel for 16 years at a major pharmaceutical organization whereby on a regular basis we would do these interpretations of likelihood of success, I should say perceived likelihood of success. We would do the handicapping.

Q. Sure. You're not an economist, correct?

A. No.

Q. You don't have any degrees in economics that I'm not aware of?

A. No, sir.

Q. You don't have any expertise in economic modeling?

A. No, I do not.

Q. You don't consider yourself qualified to testify as an expert regarding economics, do you?

A. You are correct.

Q. And just to, because I have it written here, you didn't do any economic

modeling in this case, did you?

A. Absolutely not. That was not what I was asked to do.

Q. I understand. Do you plan to testify at trial in this case?

A. I will testify at trial if asked to do so.

Q. And if you are asked to do so, do you plan to testify about patent law?

A. Well, what I plan to testify would be, number one, what I'm asked to do in terms of at that time, and, number two, is I believe it would have to be consistent with what's in my briefs, I should say my report, the opening report and the reply report.

So that means I would be testifying on three or four items, the likelihood of success, the timing, the cost, and I'm sure I'm forgetting one, but I think you got the drift. It is all identified in the report.

[redacted]

EXHIBIT
290

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 1:15-cv-07488-CM

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION

VIDEOTAPED DEPOSITION of ROBERTO MALINOW, M.D., Ph.D., taken at White & Case, 1221 Avenue of the Americas, New York, New York at 9:11 a.m., Wednesday, November 8, 2017, before Debra Stevens, Certified Realtime and Registered Professional Reporter and Notary Public of the State of New York.

[redacted]

Q. And you have reviewed their reports and CV's. Correct? 09:30

A. Yes, I did. 09:30

Q. You are aware that both of them have been practicing medicine for the treatment of Alzheimer's disease for more than 10 years. Correct? 09:30

A. I believe so. I don't remember exactly the number of years that they have been doing this, but I know that they have been practicing for a number of years. 10 years is probably a reasonable guess. 09:30

Q. You would agree that Dr. Herman is a clinical expert in the treatment of Alzheimer's disease. Correct? 09:30

MR. JOHNSON: Objection. 09:30

A. He is -- I mean, he's a clinician and he -- I believe he treats patients with Alzheimer's disease, and so I assume he could be considered an expert in that field. 09:31

Q. Similarly, you would agree that Dr. Schneider -- strike that. 09:31

You would agree that Dr. Schneider is a clinical expert in the treatment of Alzheimer's disease. Correct? 09:31

MR. JOHNSON: Objection. 09:31

A. I think that it's basically the same question, so I will give the same answer. Whatever I said for Dr. Herman, I will say or I will let you write whatever I said for Dr. Herman, I also mean for Dr. Schneider. 09:31

Q. Well, the answer for Dr. Herman was yes, he is an expert clinician. Correct? 09:31

MR. JOHNSON: Objection. 09:31

A. I don't think I said those words exactly in that order, but generally the meaning was, yes, he's practiced medicine sufficiently and treated patients for Alzheimer's so as to be considered an expert. 09:32

Q. Do you have a laboratory? 09:32

A. I run a laboratory, yes. 09:32

Q. Have you ever used memantine in any study or experiment in your laboratory? 09:32

A. We have used it. We have never published a paper with it. We have published papers with compounds that are not too dissimilar to memantine. 09:32

Q. What compounds, in your view, are not too dissimilar to memantine? 09:32

A. Well, I would say that MK-801, although I would say that there is significant differences, it has some similarities. And we have used magnesium, which again has some similarities but also some differences. 09:33

Q. Describe for me the experimental work that your laboratory has undertaken with respect to memantine. 09:33

A. As I mentioned, it was unpublished, and I'd have to think about that because that was probably some 20 years ago. And what were we doing? I think the results were inconclusive and so, you know, I wouldn't be able to tell you what the results were. 09:34

Q. What was being studied? 09:34

A. Something about synaptic transmission. I can tell you that. That is all I was studying at the time. 09:34

Q. Is that the only instance that you can recall in which your laboratory undertook studies relating to memantine? 09:34

A. Well, when you say "relating to memantine," or are you asking using memantine? 09:34

Q. Using memantine. 09:34

A. Okay. Those are the only studies that I can remember where we used memantine, but there are a number of other studies in some ways related to memantine, that we were using these drugs that I mentioned to you. 09:35

[redacted]

[redacted]

Q. So, you write, about six lines or seven lines from the bottom of paragraph 64, so about halfway in the middle -- in paragraph 64 of your 2017 report you write, "A person of ordinary skill in the art in April 1989 would have known that overstipulation of NMDA receptors causes an excess of calcium entry and neuronal death and therefore would have understood, based on the disclosures of the '703 patent, that the mechanism of action for memantine's neuroprotective effect results from its NMDA receptor antagonism." 15:23 15:23 15:23 15:23 15:23 15:23 15:23 15:23 15:23 15:23 15:24

Do you see that? 15:24

A. Yes. 15:24

Q. So is it your opinion that at the target daily dose memantine provides a neuroprotective effect by antagonizing NMDA receptors? 15:24 15:24 15:24

A. I believe that's the generally accepted view. 15:24

Q. And is it your view? 15:24

A. My view is that of the generally accepted view, generally. 15:24

Q. If you were correct that the target daily dose of memantine provides a neuroprotective effect, memantine would slow neurodegeneration in Alzheimer's disease patients. Correct? 15:24

A. Presumably. Now, again, I am not a clinician, so I don't want to say anything about relations between the amounts of neuroprotection and the progression of the disease. I don't want to get into that at all. 15:24

But the idea, I believe, is that neuroprotection is the basis of memantine's action on Alzheimer's disease patients. 15:25

Q. Let me reask my question without the clinical -- trying to avoid the clinical stuff. 15:25

A. Okay. 15:25

Q. Achieving neuroprotection would 15:25

slow neurodegeneration; correct? 15:26

MR. JOHNSON: Objection. 15:26

A. Is this in animals? In people? I mean, I certainly know that in animals, and I assume that would also be the case in people. 15:26 15:26 15:26

Q. Well, I am really just trying to piece together things you have told me. But, in essence, you have told me neuroprotection protects against neuronal loss or death by limiting the flow of calcium into the neuron. Correct? 15:26 15:26 15:26 15:26 15:26

A. That is one form of neuroprotection. Yes. 15:26 15:26

Q. And that would, therefore, save -- that would therefore spare neurons from death. Correct? 15:26 15:26 15:26

A. Yes. 15:26

Q. And sparing neurons from death would slow neurodegeneration. Correct? 15:26 15:26

A. Yes. 15:27

Q. So by definition, neuroprotection would cause slowing of neurodegeneration. Correct? 15:27 15:27 15:27

A. Yes. I think I agreed to that 15:27

earlier, but yes. 15:27

Q. You know, one of the problems with us lawyers is we have to have a clear record. Sometimes -- and this is not to criticize you, but when there are long answers or I don't phrase a question the way I might have wanted it, the record isn't always completely clear. 15:27 15:27 15:27 15:27 15:27

A. Okay. 15:27

Q. Will you agree with me that the most striking neurochemical disturbance in Alzheimer's disease is the deficiency of acetylcholine in the brain? 15:27 15:27 15:27

MR. JOHNSON: Objection. 15:27

A. That is a clinical question and I don't feel comfortable answering that. 15:27 15:27

Q. Your laboratory has shown that excessive amounts of beta amyloid decrease glutamatergic synaptic transmission. Right? 15:28 15:28 15:28

A. Yes. 15:28

Q. Glutamatergic synaptic transmission includes, among other things, signal transmission through NMDA receptors. Correct? 15:28 15:28 15:28

A. Yes. 15:28
Q. During the course of the Namenda 15:28
patent litigation, Dr. John Olney 15:29
submitted a report on behalf of Mylan. 15:29
Correct? 15:29
A. Yes. 15:29
Q. I am going to hand you a copy of 15:29
Dr. Olney's report. 15:29
MR. JOHNSON: Would you like to 15:29
take a break? It's been about 15:29
55 minutes. 15:29
Q. Would you like a break? 15:29
A. Let's do it now. 15:29
THE VIDEOGRAPHER: Going off the 15:29
record at 3:25 p.m. This marks the 15:29
end of media 4. 15:29
(Recess.) 15:48
THE VIDEOGRAPHER: We are back 15:48
on the record at 3:50 p.m. This marks 15:50
the beginning of media 5. 15:50
Q. Dr. Malinow, I am handing you a 15:50
copy of Exhibit 10. 15:50
(So marked for identification as 15:50
Plaintiff's Malinow Exhibit 10.) 15:50
Q. Dr. Malinow, you recognize 15:50

Exhibit 10 as an expert report submitted 15:51
by Dr. Olney on behalf of Mylan in the 15:51
Namenda patent litigation. Correct? 15:51
A. Yes. 15:51
Q. And your supplemental report 15:51
submitted in 2010 responded to the Olney 15:51
report. Correct? 15:51
A. Yes. 15:51
Q. If I refer to Exhibit 10 as the 15:51
"Olney report," is that acceptable to you? 15:51
A. Yes. 15:51
Q. Dr. Olney has now passed away. 15:51
Correct? 15:51
A. Yes. 15:51
Q. Dr. Olney was an extremely 15:51
well-regarded expert on neuropharmacology. 15:51
Correct? 15:52
A. Yes. 15:52
Q. Dr. Olney's science group had 15:52
published numerous articles on NMDA 15:52
receptor antagonists. Correct? 15:52
A. Yes. 15:52
Q. Dr. Olney's group had published 15:52
several articles on the effects of 15:52
memantine. Correct? 15:52

A. Yes. I should say that he 15:52
didn't -- he wasn't -- they didn't do much 15:52
electrophysiology, I should mention, which 15:52
is really the strength of my expertise. 15:52
But yes, he had done work with NMDA 15:52
antagonists, including memantine. 15:52
Q. The term "Olney lesions" is a 15:52
term named after Dr. Olney. Correct? 15:52
A. Yes. 15:52
Q. Dr. Olney also coined the term 15:52
"excitotoxicity" that is commonly used to. 15:53
Correct? 15:53
A. Yes. 15:53
Q. In your reports that you 15:53
submitted in the Namenda patent litigation 15:53
and in this litigation, you have not 15:53
identified any reason to doubt the 15:53
qualifications of Dr. Olney. Correct? 15:53
A. Not the qualifications, no. 15:53
Q. You disagree with some of his 15:53
opinions. Correct? 15:53
A. Right. 15:53
Q. Is it your opinion -- and I 15:53
understand that you agree with 15:53
Dr. Olney's -- some of his opinions at 15:53

least. Is it your opinion that 15:53
Dr. Olney's opinions as set forth in the 15:53
Olney report are unreasonable? 15:53
MR. JOHNSON: Objection. 15:53
A. I think you'd have to point to 15:54
something very specific, and then I would 15:54
tell you if there is a reason involved and 15:54
what it would be. I think that's a little 15:54
bit too vague, open-ended question. 15:54
Q. As you sit here right now, are 15:54
you aware of any opinions offered by 15:54
Dr. Olney in the Olney report that you 15:54
believe are scientifically unreasonable? 15:54
MR. JOHNSON: Objection. 15:54
A. Scientifically unreasonable? 15:54
Well, if I don't agree with them, does 15:54
that mean that I think they are 15:54
unreasonable? 15:54
Q. No. And I am not meaning to 15:54
suggest that. To be clear, I understand 15:54
that you disagree with a number of 15:54
Dr. Olney's opinions. 15:54
A. Yes. 15:55

EXHIBIT 292

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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IN RE NAMENDA DIRECT PURCHASER :

:No. 15-cv-7488-CM-JCF

ANTITRUST LITIGATION :

----------:

Washington, D.C.

Wednesday, October 18, 2017

CONFIDENTIAL

Videotaped Deposition of:

RODERICK McKELVIE,

called for oral examination by counsel for Plaintiff, pursuant to notice, at the office of White & Case, LLP, 701 13th Street, N.W., before SUSAN L. CIMINELLI, CRR, RPR, of Veritext Legal Solutions, a Notary Public in and for the District of Columbia, beginning at 9:06 a.m., when were present on behalf of the respective parties:

[redacted]

Q. Did you ever enforce that rule by excluding expert testimony that was not properly described in an expert report?

A. I did, but I didn't -- I don't think I ever excluded an expert totally. I would draw a circle around what the expert's opinion was, and say that he or she may have wandered off what the report was, but I've seen cases reported now where judges exclude it. I saw that -- you've seen certain judges just exclude a witness entirely. It's like cutting off a gladiator's arm before a fight. It's not really a fair thing to do. I think what you want to do is allow the expert report in, but contain it to what reasonably put the other on notice about what the witness was going to say.

I do remember Judge Posner had his decision that was -- I think shocked a lot of

lawyers in our community, where he excluded experts completely. You can go -- imagine trying to go to trial without your expert witness. It's going to very hard to do in patent litigation.

Q. I think I understand what you've told me. I want to circle back and make sure. When you were a Federal District Court judge, you might allow an expert to offer clarification or additional description for an opinion that was explicitly set forth in his or her report, correct?

A. That's pretty correct.

Q. But when you were a Federal District Court judge, you would not allow an expert to offer an entirely new opinion that wasn't set forth in his or her report, correct?

A. I think -- I think that's the general practice that trial judges have, and lawyers should expect, is that you have some leeway when you go into a trial, to get an expert to explain his or her opinion.

It may be that that encompasses opinions that aren't explicitly set out in the report, but

the other side's on fair notice of it. So we saw that with Malinow, that he -- Forest filed his report out of time, but gave the other side time to take his testimony. And the issue was still open with the judge when they went into the pretrial conference about whether Malinow would be allowed to testify to the matters included in his reply report, supplemental report.

Q. So that was one of the uncertainties that the parties had at the time that they settled the Namenda patent litigation, correct?

A. That was one of the uncertainties.

Q. All of the opinions that you intend to offer at trial are set forth in your report, correct?

A. Yes, I hope so.

Q. Do you agree not to offer any opinions at trial that are not set forth in your report?

A. No.

Q. Why not?

A. Because my report is in response to Mr. Johnston's report. So I'll follow Mr. Johnston

at trial maybe. If I follow him at trial, and he testifies to something that wasn't in his report, I'd like a fair opportunity to respond to that. But I'll let counsel decide what fair notice is, and what the boundaries are for my opinions.

Q. You are aware that Mr. Johnston expressed opinions on the litigation costs that Forest and Mylan saved by settling the Namenda patent litigation, correct?

A. Yes.

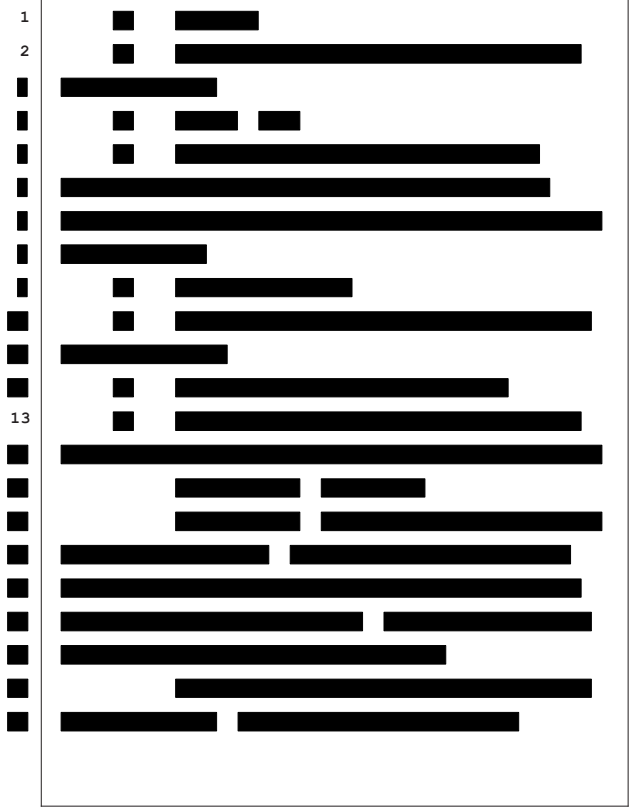
Q. Your report does not respond to any of those opinions relating to litigation costs, correct?

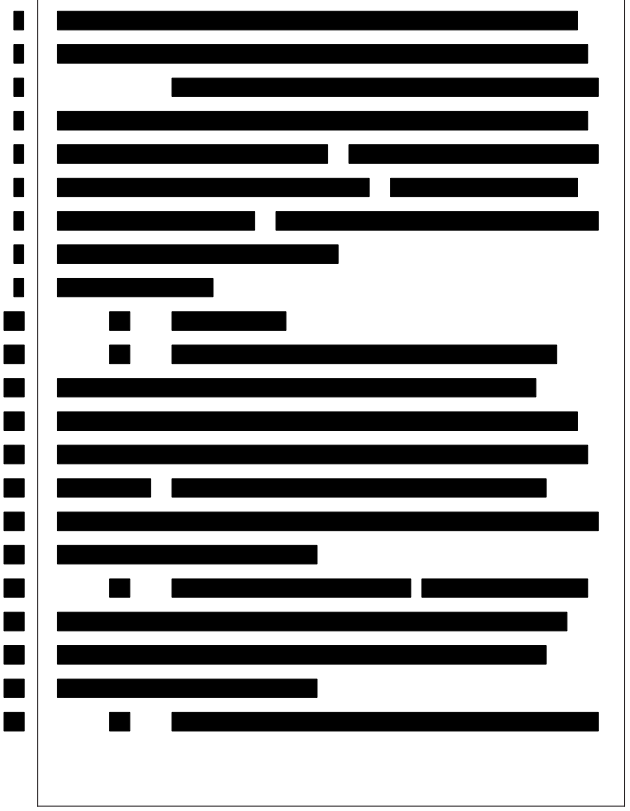
A. Correct.

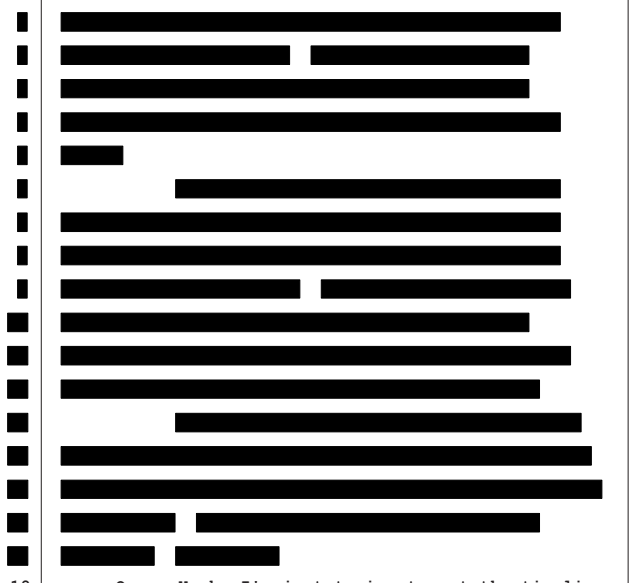
Q. You're aware that Mr. Johnston expressed opinions relating to the validity of the patent term extension that was granted with respect to the '703 patent, correct?

A. Correct.

[redacted]







Q. Yeah, I'm just trying to get the timeline that you described. It sounded like the post trial briefing process is a roughly three-month process, is that correct?

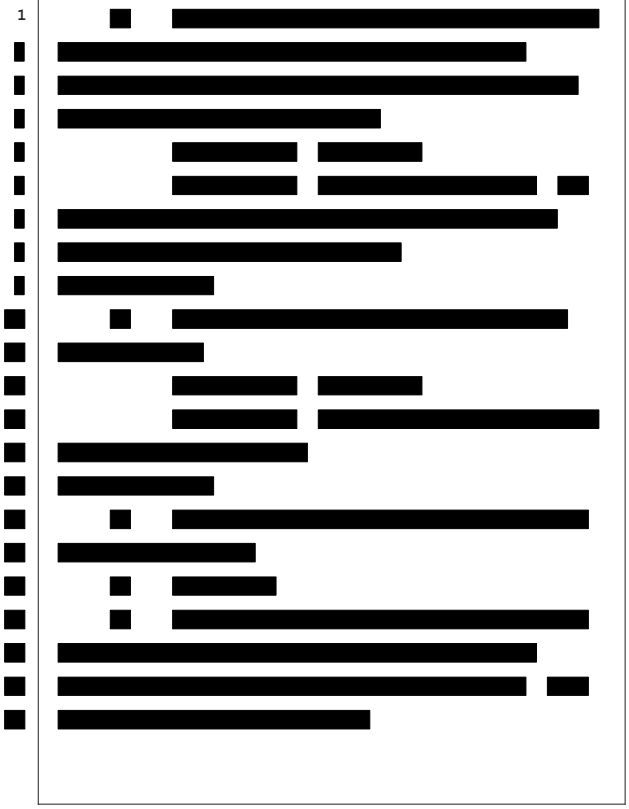
A. No, four-month.

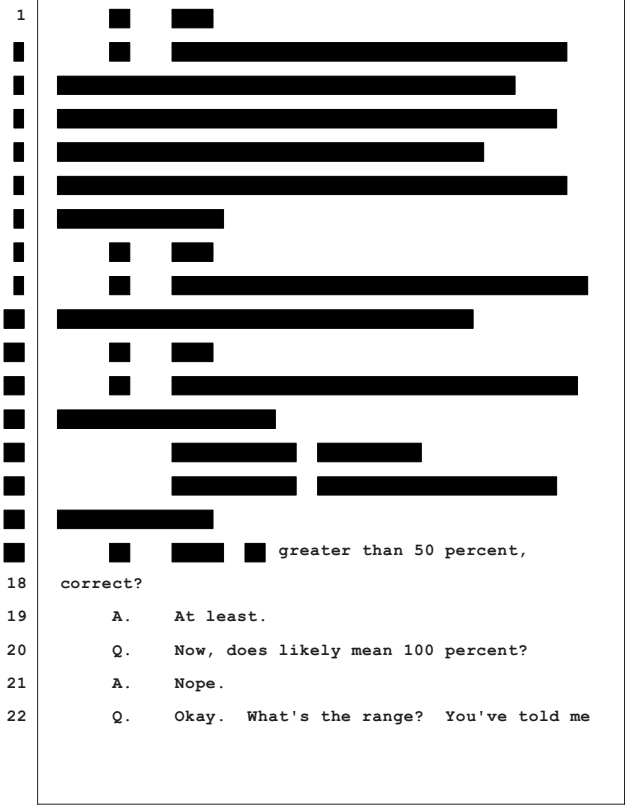
Q. Four-month process.

A. About a month to get the transcripts. Maybe 45 days -- maybe it's three to four months.

Q. Okay.

A. You have to get the trial transcripts from the court reporter. You have to take a break, and then go about writing your brief, get the associates at the law firm to write the draft of the brief while you take vacation. And the other side needs 30 days to digest that. And then you get 15 days for the associates to draft a reply.





greater than 50 percent, correct?

A. At least.

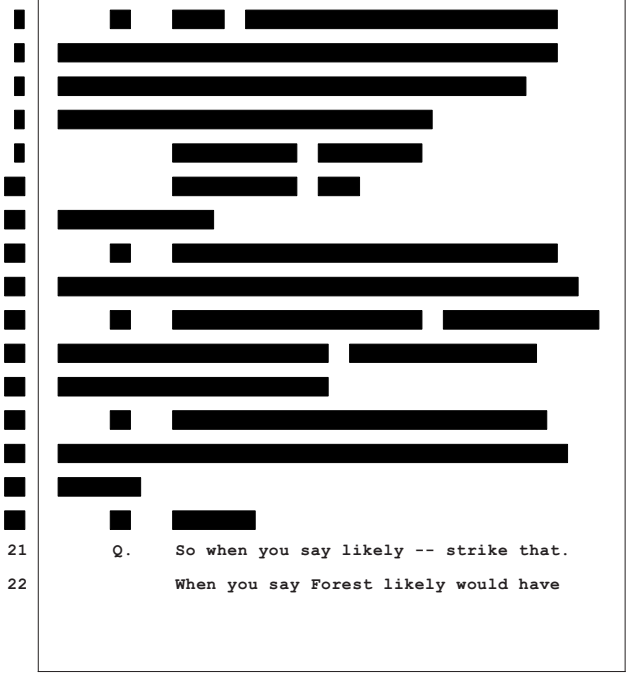
Q. Now, does likely mean 100 percent?

A. Nope.

Q. Okay. What's the range? You've told me

that likely means greater than 50 percent, but below what?

A. Just likely. You speak French. I speak German.

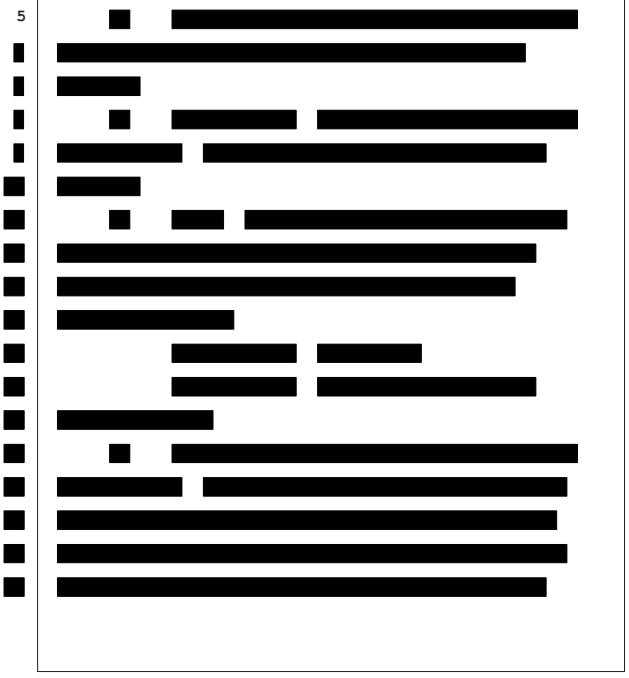


Q. So when you say likely -- strike that.

When you say Forest likely would have

prevailed on infringement, do you mean something between 51 percent and 80 percent?

A. I mean likely. I don't think percentages are helpful.



[redacted]

BY MR. CHORUSH:

Q. So what is the significance of the word high?

A. Not higher than 50.

[redacted]

[redacted]

Q. Meaning less than 50 percent likelihood of success?

A. Starting at less than 50 percent.

Q. But with no further refinement of the numerical percentage than that, correct?

A. Right. That's a weak case.

[redacted]

[redacted]

Q. Okay. What do you mean by substantially less than 50 percent?

A. Substantially less than 50 percent.

Q. Does that mean 40 percent?

A. I don't think numbers are helpful.

Q. I understand, but you're using the term substantially, and I'm trying to understand what you mean by that?

A. It's a weak defense. They're not likely to prevail on it.

[redacted]

Q. And by unlikely to prevail, you mean something less than 50 percent correct?

A. Correct.

MR. JOHNSON: Objection.

BY MR. CHORUSH:

Q. Please turn to paragraph 124.

A. Right.

[redacted]

[redacted]

Q. Those defenses were set forth in the pretrial order, correct?

A. But they were listed in the pretrial order. They weren't really advanced in the pretrial order. By advanced meaning moving forward.

[redacted]

Q. Does that mean something less than 50 percent?

MR. JOHNSON: Objection.

THE WITNESS: Yes.

BY MR. CHORUSH:

Q. Can you be any more specific than that?

A. No, because they didn't really set out their case. It just didn't look like they were even going to pursue it.

[redacted]

[redacted]

Q. And by unlikely, you mean something less than 50 percent, correct?

MR. JOHNSON: Objection.

THE WITNESS: Yes.

BY MR. CHORUSH:

[redacted]

BY [redacted]

[redacted]

BY MR. CHORUSH:

Q. And by unlikely, you mean something less than 50 percent, correct?

A. Yes.

MR. JOHNSON: Objection.

BY MR. CHORUSH:

Q. And you can't be any more specific than that, is that correct?

MR. JOHNSON: Objection.

THE WITNESS: More specific than unlikely. No.

BY MR. CHORUSH:

Q. Or more specific than less than 50 percent?

MR. JOHNSON: Objection.

THE WITNESS: That's not my opinion. My opinion is unlikely.

MR. JOHNSON: Russ, let us know when it's time for a break. I think it's been more than an hour or so.

MR. CHORUSH: Oh, have we been going an hour?

MR. JOHNSON: I think, but someone can correct me if I'm wrong.

MR. CHORUSH: All right. Let's take a break.

VIDEO TECHNICIAN: We are going off the record. The time is 11:21.

(Recess.)

VIDEO TECHNICIAN: We are back on the record at 11:32.

(McKelvie Exhibit No. 8 was marked for identification.)

BY MR. CHORUSH:

[redacted]

[redacted]

BY MR. CHORUSH:

[redacted]

Q. Let me ask my question again. I'm not sure that you answered it. At the time of the settlement of the Namenda patent litigation, Forest -- strike that.

At the time of the Namenda patent litigation, the trial court had not ruled on the merits of any of Mylan's eight defenses, correct?

MR. JOHNSON: Objection.

THE WITNESS: Correct.

BY MR. CHORUSH:

Q. At the time of the settlement of the Namenda patent litigation, Forest had not requested summary judgment on any of the eight defenses that Mylan had raised, correct?

MR. JOHNSON: Objection.

THE WITNESS: I haven't seen any summary judgment motions.

BY MR. CHORUSH:

Q. Forest could have sought summary judgment on any of those eight motions if it believed that any of Mylan's defenses was so weak that Forest was entitled to summary judgment, correct?

MR. JOHNSON: Objection.

THE WITNESS: I'm not familiar with what Judge Sleet ordered about summary judgment, but I assume they could have filed a motion for summary judgment.

BY MR. CHORUSH:

Q. Mylan only needed to succeed on one of the eight defenses shown on Exhibit 8 in order to prevail in the Namenda patent litigation, correct?

A. Correct.

Q. In order to prevail in the patent litigation, Forest had to succeed on all eight of the defenses that Mylan had raised, as shown in Exhibit 8, correct?

MR. JOHNSON: Objection.

THE WITNESS: To the extent that Mylan pursued them at trial.

BY MR. CHORUSH:

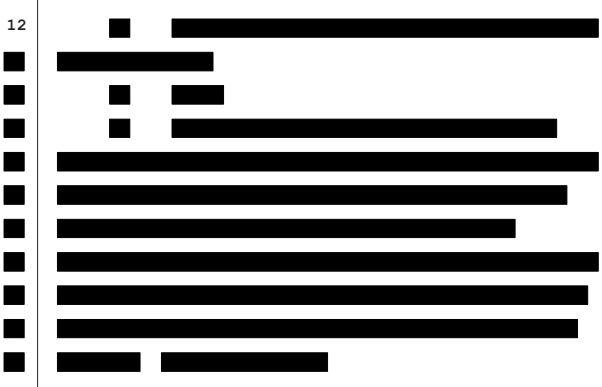
[redacted]

Q. Do you agree with me that claims that are broadened in re-examination are invalid?
A. I didn't give an opinion on that.
Q. What is your understanding of the law?
MR. JOHNSON: Objection, outside the scope.
THE WITNESS: I prefer not to give opinions on the law.
BY MR. CHORUSH:
Q. Have you ever seen a case that addressed whether or not claims that are broadened in re-examination are valid?
MR. JOHNSON: Same objection.
THE WITNESS: I've seen cases where claims are broadened within the two-year period after a patent was issued. I have seen cases, but that's my answer.
BY MR. CHORUSH:
Q. That refers to reissue proceedings, not re-examination proceedings, right?
A. Right.
Q. But there was no reissue proceeding in

the '703 patent, correct?
A. Correct.
Q. There was just a re-examination proceeding, correct?
A. Correct.
Q. Have you read the statute relating to re-examination of patents?
A. I'm sure I have.
MR. JOHNSON: Objection.
BY MR. CHORUSH:
Q. Have you ever seen a case that addresses whether a patent owner can obtain claims in re-examination that are broader than the originally issued claims?
A. I've seen cases like that. I'm just not prepared to give an opinion on the broadening reissue.
Q. Do you agree with me that if an independent claim is not infringed, that dependent claims cannot be infringed either?
MR. JOHNSON: Objection.
THE WITNESS: That's correct.

BY MR. CHORUSH:
Q. And in the originally issued '703 patent, there was only one independent claim, correct?
A. I don't recall.
MR. JOHNSON: Objection.
BY MR. CHORUSH:
Q. Let's take a look.
MR. JOHNSON: We should break for lunch at some point soon, I think.
MR. CHORUSH: Okay. Let's break for lunch, then.
VIDEO TECHNICIAN: Going off the record. The time is 12:39.
(Whereupon, at 12:39, a luncheon recess was taken.)

A F T E R N O O N S E S S I O N
(1:39 p.m.)
Whereupon,
RODERICK McKELVIE,
was called for continued examination, and having been previously duly sworn was examined and testified further as follows:
EXAMINATION BY COUNSEL FOR PLAINTIFF CONTINUED
VIDEO TECHNICIAN: We are back on the record at 13:39.
BY MR. CHORUSH:



[redacted]

Q. Please turn to Exhibit B for your report.
A. Okay.
Q. Exhibit B to your report is titled "materials considered by Roderick McKelvie."

Correct?
A. Correct.
Q. And you break the materials considered into several different categories, correct?
A. Yes.
[redacted]
Q. And you list a number of the pleadings by ECF number in that portion of Exhibit B, correct?
A. Correct.
Q. What does ECF refer to?
A. I assume it's a docket item number.
Q. Okay. And you place those in order of the docket control numbers, starting with number 1 up to number 498, correct?
A. Yes.
[redacted]

[redacted]

MR. JOHNSON: Counsel, I would note that it appears that what's appended here to Judge McKelvie's report is his original Exhibit B, not the revised Exhibit B that we've served on you. I'm just noting that for the record.
MR. CHORUSH: Okay. Just so we'll know, because I printed this out beforehand, does the revised Exhibit B change Exhibit B with respect to either Mylan's answering claim construction brief or the -- Mylan's objection to the report and recommendation on claim construction.
MR. JOHNSON: No, I don't believe it did. I think we have copies of that if it would help you, but --
MR. CHORUSH: If you'd like to introduce the amended Exhibit B at some point, that's fine. This is the copy that I have.

MR. JOHNSON: Okay.
BY MR. CHORUSH:
[redacted]

EXHIBIT 315

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION	No: 15-cv-7488-CM(JF)

Videotaped Deposition of David L. Rosen, J.D.
Washington, D.C.
Thursday, October 26, 2017
9:13 a.m.

Job No. 2732014
Reported by: Laurie Donovan, RPR, CRR, CSR

[redacted]

BY MR. ENGER:

Q Mr. Rosen, do you realize you're still under oath?

A Yes, I do.

Q Is there any testimony from earlier this morning you need to correct or amend at this time?

A Not that I'm aware of.

[redacted]

Q Mr. Rosen, you've just been handed Exhibit 3, which is 35 U.S.C. Section 282.

Have you ever seen this statute before?

A No.

Q This is the statute for patent defenses. Do you see that from the title?

A Yes.

Q You've never read this statute?

A No.

Q You wouldn't consider yourself to be an expert on this statute?

A No.

Q Direct your attention to the second page. See right about here where it says "Invalidity of the extension"?

Do you see that?

A Yes, I do.

Q Let me read it to you.

This statute, 35 U.S.C. Section 282, states that "Invalidity of the extension of a patent term or any portion thereof under Section 154(b) or 156 of this Title because of the material failure by the applicant for the extension, or by the Director, to comply with the requirements of such section shall be a defense in any action involving the infringement of a patent during the period of the extension of its term and shall be pleaded."

Do you see that?

A Yes.

Q So you would agree that if you violate the portion of the statute where an applicant for

the extension or the Director does a material failure to comply with the requirements, then the patent term extension is invalid?

MR. MAJCHRZAK: Objection. Calls for a legal conclusion. Outside the scope of Mr. Rosen's report.

THE WITNESS: You know, I can just read the words, but I can't draw any conclusions from that.

BY MR. ENGER:

Q Do you see the word "material failure" in that portion of the statute?

A Yes.

Q What is a "material failure" under 35 U.S.C. Section 282?

MR. MAJCHRZAK: Objection. Calls for a legal conclusion. Outside the scope.

THE WITNESS: I'm not able to opine on that.

BY MR. ENGER:

Q Are you aware of any case law that interprets Section 282's "material failure" language?

MR. MAJCHRZAK: Same objection.

THE WITNESS: It's outside the

scope. I'm not able to opine on that.

BY MR. ENGER:

Q My question was: Are you aware -- yes or no -- of any case law that interprets Section 282's "material failure" language?

A No.

Q Per the statute, whose material failure triggers the defense?

MR. MAJCHRZAK: Objection. Calls for a legal conclusion. Outside the scope.

THE WITNESS: Just the plain reading of the statute, the language says "by the applicant for the extension or by the Director."

BY MR. ENGER:

Q Does the applicant file the extension with the Patent Office?

A I'm not 100 percent sure of that.

Q Whenever it says "the Director," does that refer to the Director of the Patent Office?

A I'm not, I'm not going to opine on that either.

Q Are you aware of any other directors relating to patent term extension?

A No.

Q Would you agree that 35 U.S.C. Section 282 is a statute about the Patent Office?

MR. MAJCHRZAK: Objection. Calls for a legal conclusion.

THE WITNESS: It's a, it's a statute -- it's a -- appears to be a statute on "remedies for infringement of patent and other actions," by its title.

(Exhibit 4 was marked for identification.)

BY MR. ENGER:

Q I'm going to hand you what's been marked as Exhibit 4.

Mr. Rosen, Exhibit 4 is 35 U.S.C. Section 156. You said this was one of the things you reviewed in preparation for your deposition today?

A Yes.

Q And you've seen this before?

A Yes.

Q Have you read it from cover to cover?

A I have read it. I don't know if I've read it cover to cover, but I have read it.

Q How many times have you read it?

A I don't know.

Q More than five?

A Possibly.

Q More than ten?

A Probably not.

Q Would you consider yourself to be an expert on this statute?

A No.

Q Let me direct you to the second page to Section (d)(1).

Do you see that? It's kind of at the top right of the second column.

A Yes.

Q So 35 U.S.C. Section 156(d)(1) states that "To obtain an extension of the term of a patent under this section, the owner of record of the patent or its agent shall submit an application to the Director," right?

A That's what the language says, yes.

Q And then two sentences later, the statute lists the contents of the application; fair?

A I'm not exactly following you.

Q See at the end of this paragraph where it says "the application shall contain"?

A Yes.

Q And it has a list of subsumed paragraphs, A, B, C, et cetera?

A Yes.

Q So this statute lists what the contents of the application "shall contain"; fair?

A Yes.

Q Does the application have to have each of the five things labeled A through E in the statute?

MR. MAJCHRZAK: Objection. Calls for a legal conclusion.

THE WITNESS: The language of the word says "shall contain," so generally, yeah, that is a -- it's language that says that an application "shall contain" things.

BY MR. ENGER:

Q Must contain.

A It says "shall contain."

Q Is there any difference in your mind between "shall contain" and "must contain"?

A No.

Q Is it acceptable for an application -- a patent term extension application, I should say -- to contain only two of those five things?

MR. MAJCHRZAK: Objection.

THE WITNESS: I'm not, I'm not capable of rendering an opinion on that situation.

BY MR. ENGER:

Q Is it acceptable for a patent term extension application to contain only four out of those five things?

MR. MAJCHRZAK: Objection.

THE WITNESS: I'm not able to render an opinion with respect to that.

BY MR. ENGER:

Q Is it a material failure under Section 282 if a patent term extension application does not contain each of the five things enumerated in Section 156(d)(1)?

MR. MAJCHRZAK: Objection.

THE WITNESS: I'm not able to render an opinion on that situation.

BY MR. ENGER:

Q Do you see (d)(1)(C)?

A I see that.

Q Do you see that one of the things that the application shall contain is "information to enable the Director to determine under subsections (a) and (b) the eligibility of a patent for

extension and the rights that will be derived from the extension"?

Do you see that?

A Yes.

Q Per this statute, who is it that determines the eligibility of a patent for extension and the rights that will be derived from the extension?

MR. MAJCHRZAK: Objection.

THE WITNESS: Yeah, I'm not able to render an opinion with respect to that.

BY MR. ENGER:

Q Can you not see where it says that the Director is who must be enabled to determine the eligibility of a patent for extension?

A That's the language that appears to be in the statute, yes.

Q Do you have any reason to doubt that it is not the Director who is, in fact -- determines whether a patent is eligible for -- an application is eligible for a patent term extension?

A Well, it talks about "information to enable the Director and the Secretary of Health and Human Services or the Secretary of Agriculture."

Q Do you see what the information that has to enable the Director and Secretary of Health and Human Services or the Secretary of Agriculture, uh, that information has to determine the period of extension under Subsection (d), right? Under Subsection (g)?

A That appears to be the language of the statute, yes.

Q So the Director is who determines the eligibility of the patent for extension and the rights that will be derived, and the Director and the Secretary of Health and Human Services or the Secretary of Agriculture determines the period of extension under Subsection (g)?

A That appears to be the plain language of the statute.

Q What information must be included in the application to enable the Director to determine the eligibility of a patent for extension and the rights that will be derived from the extension?

A I'm not able to answer that question.

Q Do you believe it's the information specified in 37 C.F.R. Section 1.740?

MR. MAJCHRZAK: Objection.

THE WITNESS: I haven't reviewed

that to come to that conclusion.

BY MR. ENGER:

Q Let's direct your attention to the next subsection, specifically 156(d)(1)(D).

Are you there?

A Yes.

Q Per this statute, does the application also have to include "a brief description of the activities undertaken by the applicant during the applicable regulatory review period with respect to the approved product and the significant dates applicable to such activities"?

A Yes, I see that.

Q What type of information is submitted as part of the "brief description of the activities undertaken by the applicant during the applicable regulatory review period"?

A That's a chronology of events relative to both the IND and the NDA.

Q Anything else?

A That's -- a brief description of the activities, that's correct.

Q Does the chronology have to -- that's submitted have to cover the entire review period or just a part of the review period?

A It says "during the applicable regulatory review period and significant dates."

Q So does that mean that the chronology that's submitted has to be, just cover part of the review period or the entirety of the review period?

A "A brief description of activities during the applicable regulatory review period."

Q And I'm asking if that means a portion of the applicable regulatory review period or the entirety of the applicable regulatory review period.

A It says "during the applicable regulatory review period," and so I would -- you know, not being -- having reviewed these for other people, we have tried to make those as, you know, as complete as possible to make a regulatory determination.

Q You would never advise a client to submit a chronology of events that just covers a portion of the applicable regulatory review period, would you?

A I don't believe I would do that, no.

[redacted]

[redacted]

Q Let me read you my question so that we have a clear record.

[redacted]

[redacted]

Q I'm handing you what's been marked as Exhibit 5.

Mr. Rosen, Exhibit 5 is 37 C.F.R. Section 1.740. Have you ever seen this regulation before?

A No.

Q You can see from the title, this is the regulation governing the formal requirements of a patent term extension application, correct?

A From the language of the C.F.R., that appears to be correct, yes.

Q You've never read this regulation, correct?

A That's correct.

Q You wouldn't consider yourself an expert on this regulation?

A That is correct.

Q Does this regulation require -- and I'm looking in the first paragraph -- that "a formal application for the extension of patent term must include" a number of things, enumerated 1 through 15?

MR. MAJCHRZAK: Objection. Legal conclusion. Outside the scope.

THE WITNESS: I've never read that, but just let me -- is there 15 of these things?

That appears to be the case, just from looking at this document.

BY MR. ENGER:

Q So per this regulation, does an

application for patent term extension have to include each of these 15 things?

MR. MAJCHRZAK: Same objection.

THE WITNESS: I can't draw a conclusion. All I can do is just read the plain language of the C.F.R., and it says "must."

BY MR. ENGER:

Q You've read a lot of government regulations in your practice, correct?

A Correct.

Q And you don't know any other way to interpret this other than that the patent term extension application must include the 15 things enumerated in Section 1.740?

MR. MAJCHRZAK: Objection. Legal conclusion. Outside the scope.

THE WITNESS: Again, having read numerous other C.F.R. provisions, I'm not -- you know, I have not read this one, but yeah, I'm just looking at the language here, and it says "must include."

BY MR. ENGER:

Q Is it a material failure not to include each of the 15 things enumerated in 37 C.F.R.

Section 1.740?

MR. MAJCHRZAK: Same objection.

THE WITNESS: I'm not in a position to offer an opinion on that.

BY MR. ENGER:

Q If Mr. Johnston offers an opinion that it is a material failure to not include each of the items in 37 C.F.R. Section 1.740, you're in no position to rebut that; fair?

A I'm not in a position to rebut that.

Q Direct your attention to the second page, please. Do you see Section 1.740(a)(10)? It's about in the middle of the first column.

A Yes.

Q This says that one of the things that the patent term extension application must contain is "a statement beginning on a new page of the relevant dates and information pursuant to 35 U.S.C. 156(g) in order to enable the Secretary of Health and Human Services or the Secretary of Agriculture, as appropriate, to determine the applicable regulatory review period."

Do you see that?

A Yes, I see that.

Q And for patents that claim a human drug,

such as the '703 patent, the information that must be included is, A, the effective date of the investigational new drug (IND) application and the IND number; B, the date on which a new drug application (NDA) was initially submitted and the NDA number; and C, the date on which the NDA was approved, correct?

A Yes.

Q When completing this portion of the patent term extension application, how does one determine, A, "the effective date of the investigational new drug (IND) application"?

A There's correspondence with FDA.

[redacted]

Q So who determines the effective date of the IND application?

A It's set forth in the letter from FDA to the applicant, the IND applicant.

Q And what criteria does the FDA use to write that letter and set that date?

A It's the date that the application is received, and then the IND becomes effective 30 days from the day of receipt.

Q So it's pretty ministerial?

A Yeah.

Q You submit an IND. 30 days later -- I'm sorry. It's ministerial in the fact that you submit an IND, it's received, and 30 days later, that's the effective date?

A Unless FDA says that you're on clinical hold.

Q Could you elaborate, please?

A A clinical hold is something where the, the -- there's a substantial risk of harm to patients, and you can't start a study as proposed under the IND until you address those situations and FDA allows you to proceed with the investigations.

Q So if the FDA puts your IND on clinical hold, then the IND's effective date is not 30 days from its initial submission but some other date?

A That's correct.

Q And what's that other date?

A Whenever FDA says that you can start the study.

Q Back to Exhibit 5, please, the bottom of page 163.

A Mm-hmm.

Q Do you see 37 C.F.R. Section 1.740(a)(11)?

A Yes.

Q Another of the things that the patent application must contain is, 11, "a brief description beginning on a new page of the significant activities undertaken by the marketing applicant during the applicable regulatory review period with respect to the approved product and the significant dates applicable to such activities," correct?

A I see that, yes.

[redacted]

[redacted]

If the applicant believed that the applicable regulatory review period was one period, was one length -- are you with me?

A I'm with you.

Q Would you ever advise that client to only submit a description of the significant activities that occurred during a portion of the applicable regulatory review period as the client understood it at that time?

A No. I would want them to provide information, but in this situation they disclosed -- when the original IND was submitted, they disclosed the activities under the IND, they disclosed when the IND was inactivated, they also disclosed when the IND was reactivated, and they also provided information on the foreign studies that were conducted during the time of inactivation.

Q So no, you would never advise a client to only submit a description of the significant

activities that occurred during a portion of the applicable regulatory review period as the client understood it at that time; fair?

MR. MAJCHRZAK: Objection.

THE WITNESS: I think I answered the question.

BY MR. ENGER:

Q Let me direct your attention to Exhibit 5, the twelfth requirement for a patent term extension application.

Do you see it?

A Yes.

Q Here it says in the regulation that another of the things that the patent term extension application must contain is, 12, "a statement beginning on a new page that in the opinion of the applicant the patent is eligible for the extension and a statement as to the length of extension claimed, including how the length of extension was determined," correct?

A That's what the -- that's what that provision reads, yes.

Q Why is it important to include that information in the application?

MR. MAJCHRZAK: Objection. Legal

conclusion. Speculation.

THE WITNESS: It's to help determine the regulatory review period.

BY MR. ENGER:

Q How does the applicant determine the length of the extension that's claimed?

A They count the number of days in the IND phase or the testing phase and the number of days in the review phase, and they -- there's a, a formula to calculate the regulatory review period.

Q And that formula takes into account the number of days during that review period whenever they were not diligent?

A I didn't say that they were -- you know, there's a calculation on what they determine to be the regulatory review period. I don't believe that there's, uh, that they make a determination at that time whether or not they're not diligent or not or what -- or they would say that -- you know, I don't think there's a diligence calculation figured into that at that point.

Q You're not aware of patent term extension applications here in this section where they explicitly state the number of days whenever they were not diligent?

A Oh, there were, there were some inactivations and things of that sort and, you know, what they were claiming for patent extensions in this situation. The applicant decided that they determined that the extension was calculated under certain -- you know, at a later date when the IND was reactivated as opposed to when the IND was originally submitted.

Q So let's take a step back. Let's divorce from the facts of this case. I just want to understand your general understanding of the statutes and what's the requirements of the patent term extension application, okay?

A Yes.

Q In general, the applicant, as part of a patent term extension application, is required to affirmatively state, under the section where it determines how the requested patent term extension is calculated, an affirmative statement about the number of days in which it was not diligent, right?

A No. It's, it states when the IND was active, when it become -- when it became in effect, and then it became when it was -- uh, during the inactivation period, they could at

least note that, and just because it was inactive doesn't mean that, doesn't mean that somebody was not diligent in the course of the testing phase.

Q In general, not on the facts of this case, you're telling me that there's no requirement that an applicant affirmatively state the number of days in which it was diligent and not diligent?

A I would want to go back and review that one more time, but I don't know if there's a, there's something that is a specific statement that says that you have to state that you were not diligent. You could say that there was no activity during this particular time frame, and somebody else would draw the conclusion as to whether or not there was diligence or not diligence during that time frame.

Q You've never prepared a patent term extension application?

A I didn't say that.

Q Have you?

A I have participated in the preparation of patent term extension applications.

Q Have you participated in the drafting of a patent term extension application involving this

Section (12), which is the statement that the patent is eligible for the extension, a statement as to the length of the extension claim, including, importantly, how the length of the extension was determined?

A I did not, never -- I never prepared that particular statement.

Q So it's entirely possible that you are required to make an affirmative statement in a patent term extension application as to the number of days which you were not diligent; you don't know?

A I can't draw a conclusion to that effect.

Q Because you just don't know?

A That's correct.

Q I want to direct your attention to the thirteenth requirement for a patent term extension application.

Do you see that?

A Yes.

Q Another of the things that the patent term extension application must contain is, 13, "a statement that applicant acknowledges a duty to disclose to the Director of the United States

Patent and Trademark Office and the Secretary of Health and Human Services or the Secretary of Agriculture any information which is material to the determination of entitlement to the extension sought," correct?

A That's what that statement says.

Q This duty; is it set forth in 37 C.F.R. Section 1.765?

A I can't say. I have not read that section.

Q Do you know why the government requires patent term extension applicants to acknowledge their duty to disclose material information?

MR. MAJCHRZAK: Objection.

Speculation.

THE WITNESS: Not particularly, no.

BY MR. ENGER:

Q That never came up while you were at the FDA?

A No.

Q And it's never come up in your practice?

A Not this particular situation, because I have not been involved in the preparation of those statements.

Q Why is it important that the Patent

Office have all the material information before it when determining patent term extension eligibility?

MR. MAJCHRZAK: Objection.

Speculation. Outside the scope.

THE WITNESS: I'm not a patent officer. I don't practice in front of the USPTO.

BY MR. ENGER:

Q If the Patent Office didn't have all the material information before it, it might make a wrong determination; fair?

MR. MAJCHRZAK: Objection.

Speculation. Outside the scope.

THE WITNESS: I can't say, but it makes some sense that they could come to a different conclusion, perhaps.

BY MR. ENGER:

Q That makes a lot of sense, doesn't it?

MR. MAJCHRZAK: Objection.

THE WITNESS: Not necessarily, but it just makes sense.

BY MR. ENGER:

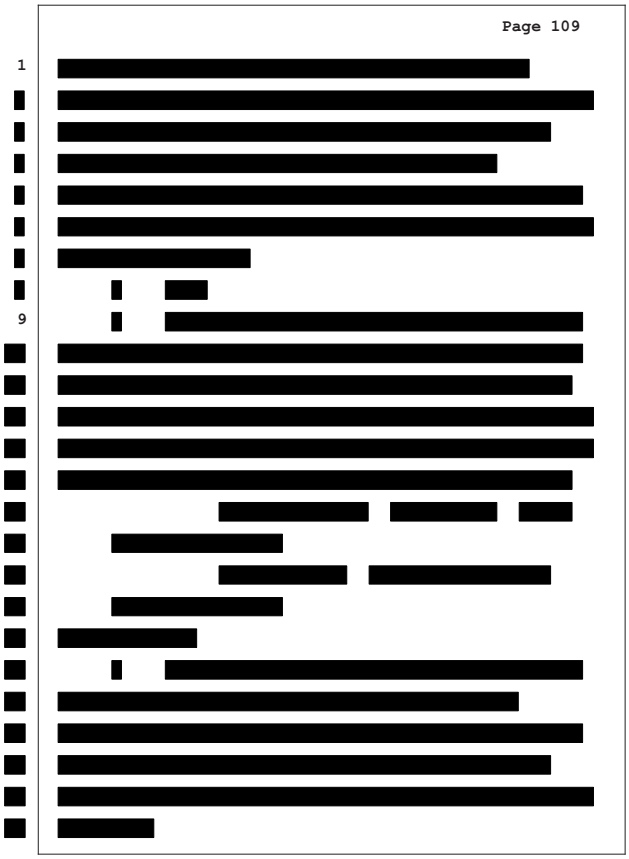
Q It makes, it makes sense that the Patent Office should have all the material information

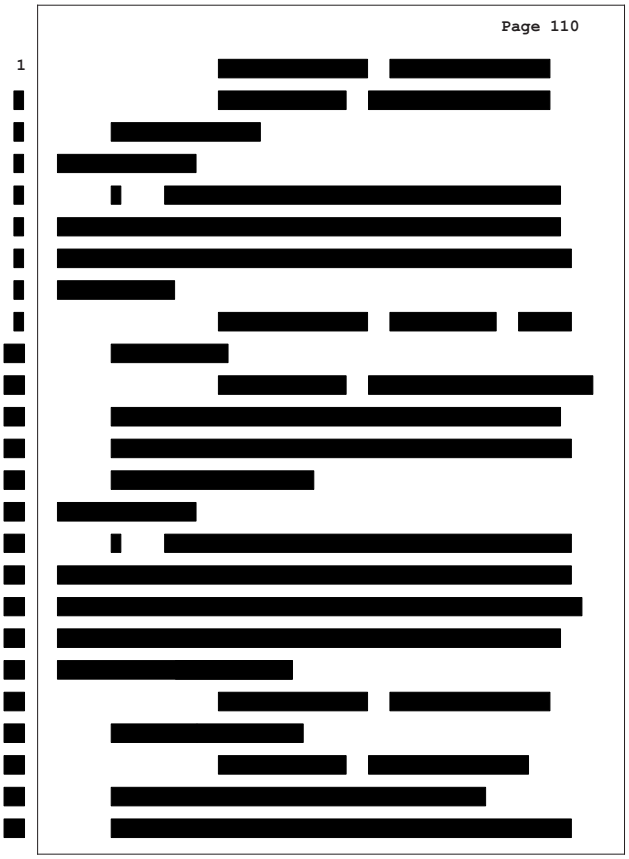
A Yes.
Q Another person who owes the Patent and Trademark Office a duty of candor and good faith is "each attorney or agent who represents the patent owner"; fair?
MR. MAJCHRZAK: Objection. Legal conclusion. Outside the scope.
THE WITNESS: That's what the, the language of the C.F.R. says.
BY MR. ENGER:
Q And "every other individual who is substantively involved on behalf of the patent owner in a patent term extension proceeding" also owes that same duty of candor and good faith, right?
MR. MAJCHRZAK: Same objection.
THE WITNESS: That's what the C.F.R. says.
BY MR. ENGER:
Q Do you see the second sentence of Section (a)?
A Starting with?
Q "All such individuals."
A I see that sentence, the beginning of that sentence, yes.

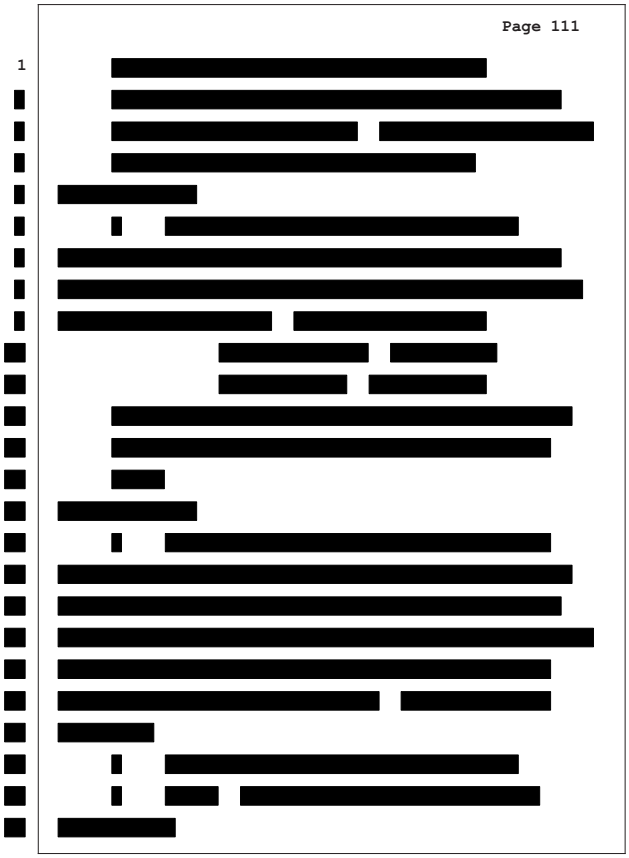
Q Why don't you read that sentence in your head, and then I want to ask you a few questions about it.
(Witness peruses document.)
THE WITNESS: Okay.
BY MR. ENGER:
Q Per this regulation, what, what steps are individuals who are aware of material information adverse to a determination of entitlement to the patent term extension sought required to do?
MR. MAJCHRZAK: Objection. Legal conclusion. Outside the scope.
THE WITNESS: I'm only reading from the C.F.R. that the -- if they become aware -- "if they are aware, or become aware, of material information adverse to a determination of entitlement . . . which has not been previously made of record in the patent term extension proceeding must bring [that] to the attention of the Office or the Secretary . . . as soon as it is practical to do so after the individual becomes aware of the information," and "Information is material where there is a substantial

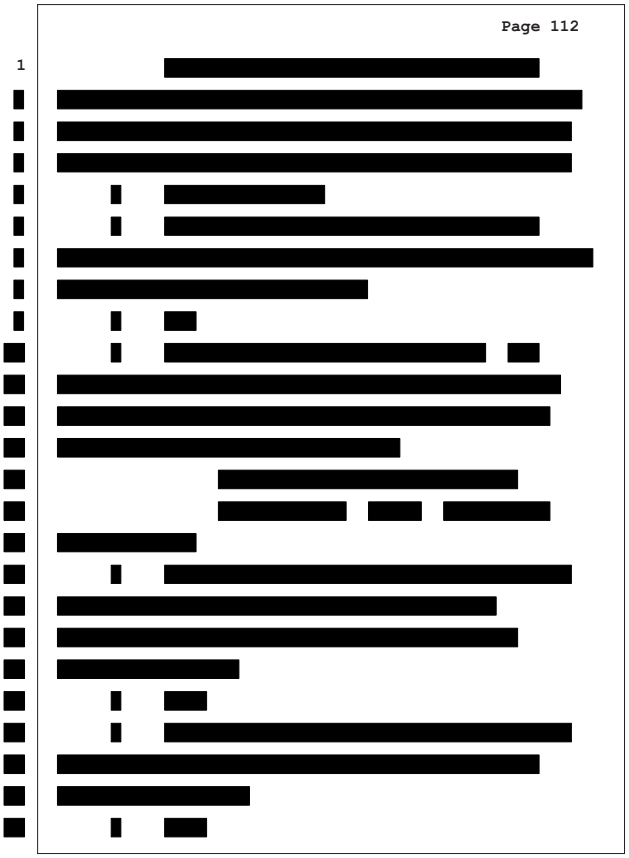
likelihood that the Office or the Secretary would consider it important in determinations to be made in the patent term extension proceeding."
BY MR. ENGER:
Q So individuals involved in a patent term application -- patent term extension application have to disclose material information to the Patent Office; fair?
MR. MAJCHRZAK: Objection. Legal conclusion. Outside the scope.
THE WITNESS: This is not an area that I practice in, so it's very hard for me to opine on any of this information.
BY MR. ENGER:
Q What if, after a patent term extension application is submitted, one of these individuals who owes the duty of candor and good faith becomes aware of material information? What are they required to do?
MR. MAJCHRZAK: Objection. Legal conclusion. Outside the scope.
THE WITNESS: I can only read it's material information "where there is a substantial likelihood that the Office or the

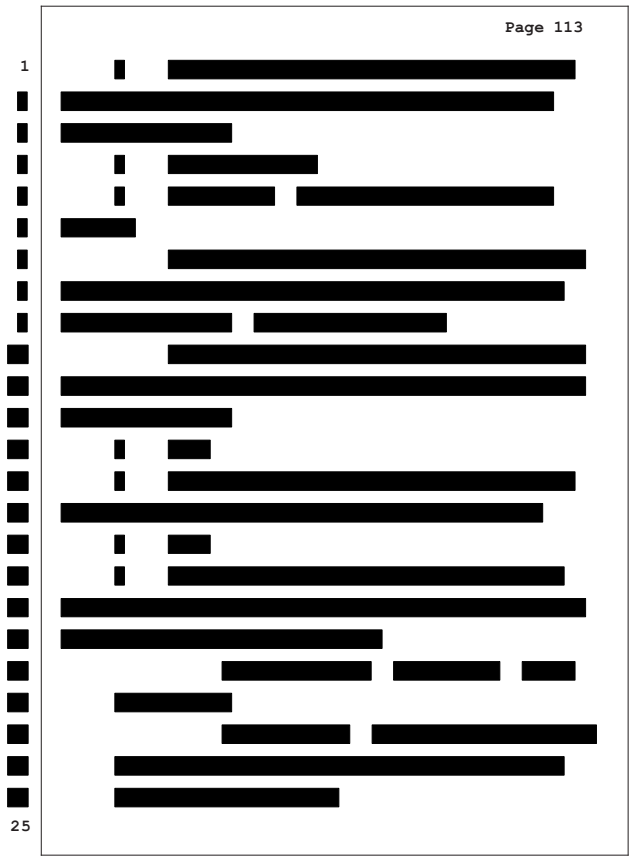
Secretary would consider it important in determinations," and the patent determination would be to bring it to the Secretary as soon as possible.
BY MR. ENGER:
Q So this duty to disclose material information exists before you file the application and also continues to exist after you file the application; fair?
MR. MAJCHRZAK: Objection.
THE WITNESS: Again, I'm not an expert in this area, and it's very hard for me to render any conclusions other than just to read the plain language of the statute -- of the regulations.
BY MR. ENGER:
Q And when you read the plain language, you would agree that the duty of candor and duty to disclose material information exists both before the application is filed and after the application is filed; fair?
MR. MAJCHRZAK: Objection.
THE WITNESS: It appears that to be the case.

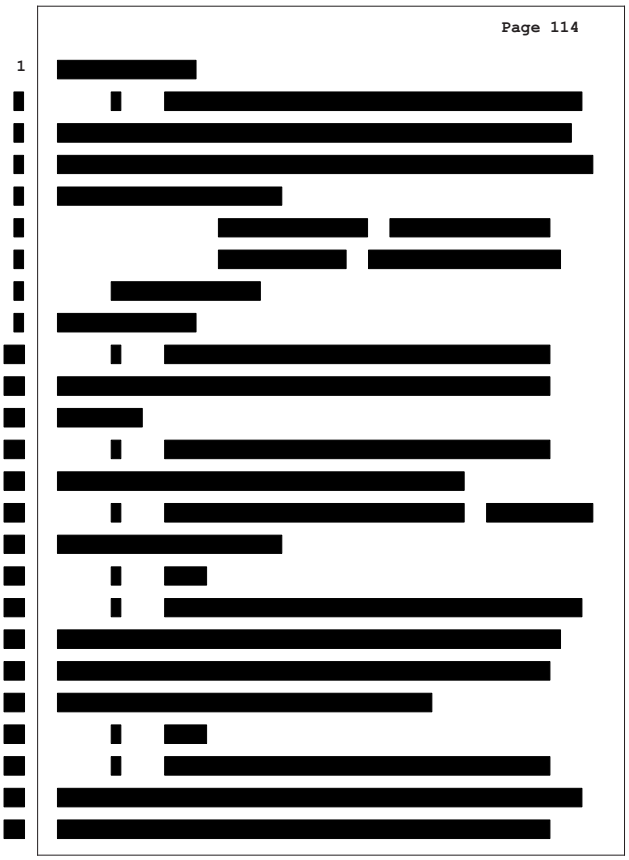


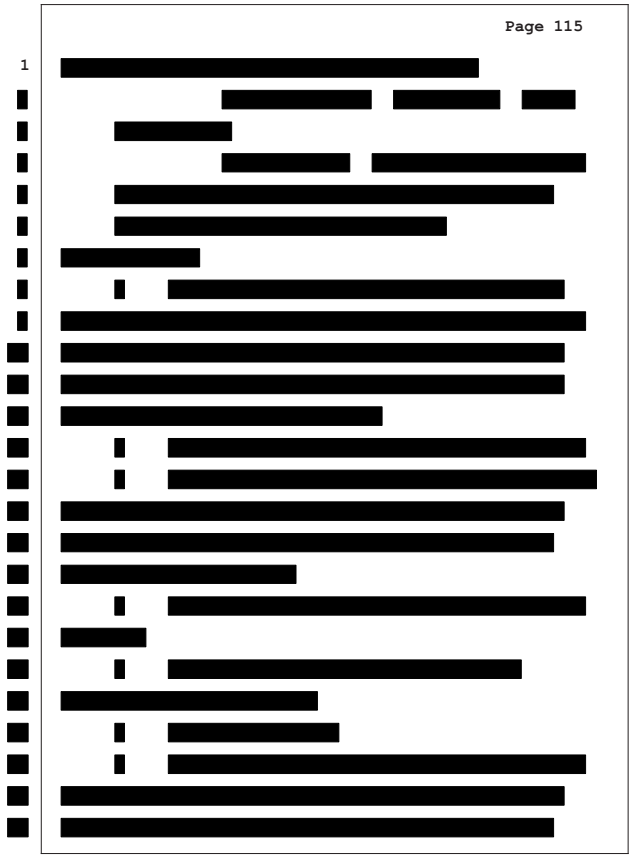


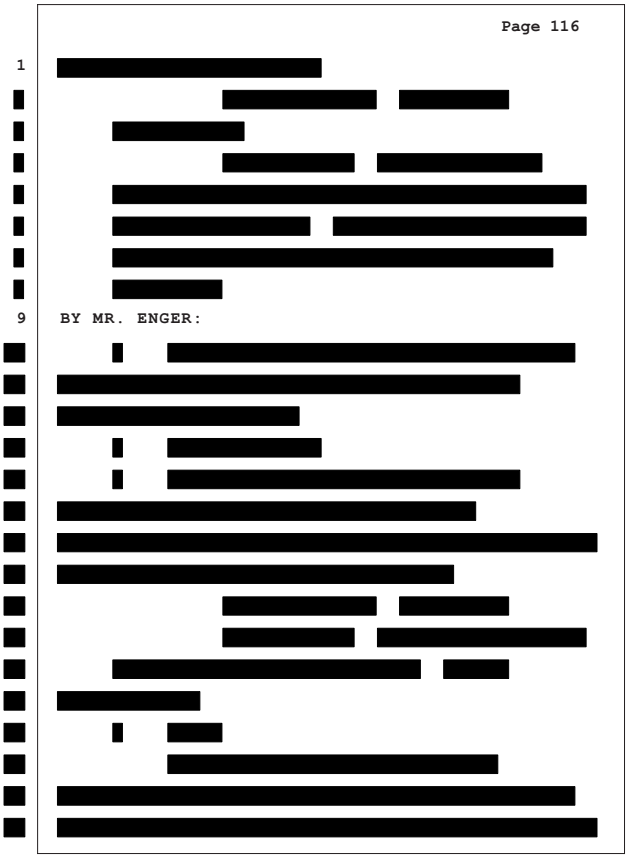


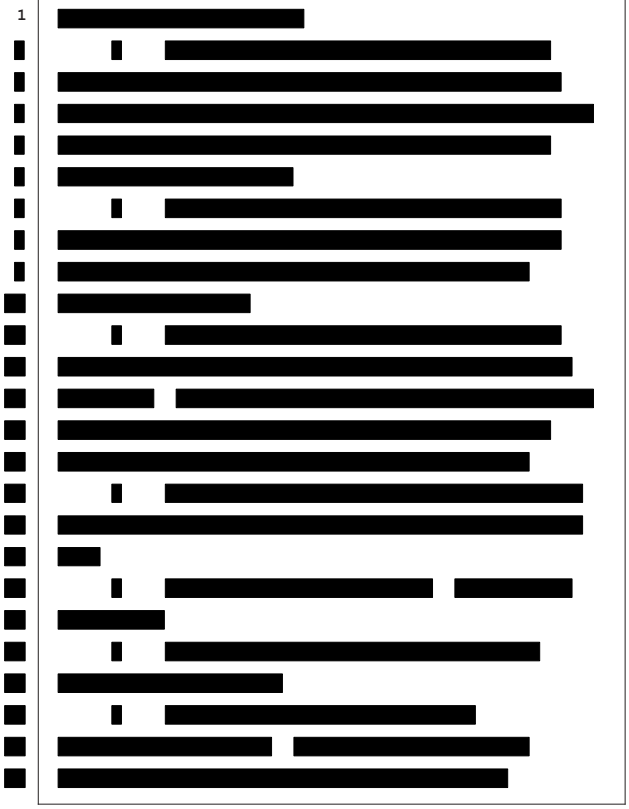


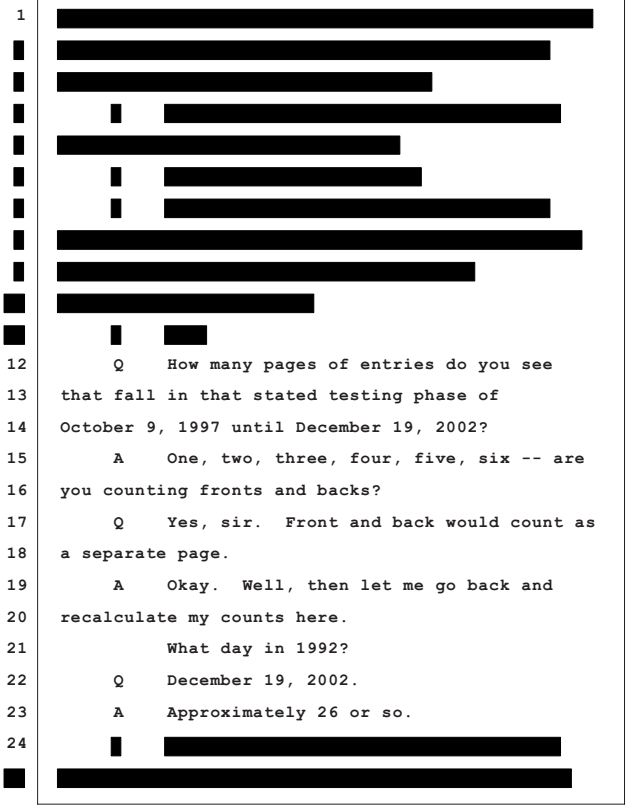







BY MR. ENGER:





Q How many pages of entries do you see that fall in that stated testing phase of October 9, 1997 until December 19, 2002?

A One, two, three, four, five, six -- are you counting fronts and backs?

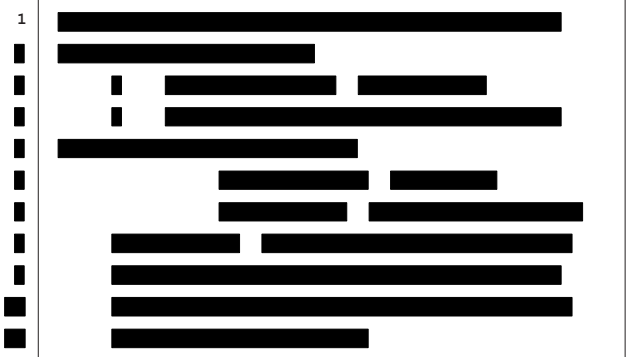
Q Yes, sir. Front and back would count as a separate page.

A Okay. Well, then let me go back and recalculate my counts here.

What day in 1992?

Q December 19, 2002.

A Approximately 26 or so.



BY MR. ENGER:

Q Are you saying that there was no other activity taking place between February 7, 1990 and October 9, 1997 that should have been included on this chronology?

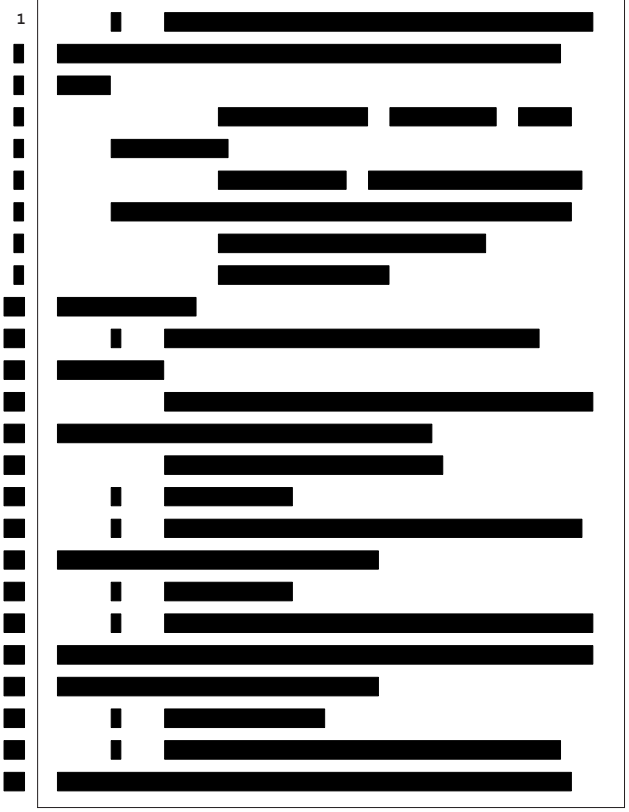
A I'm not saying that. I'm just saying that there's just -- this is the log, the submissions logged that went back and forth between the company and the Agency.

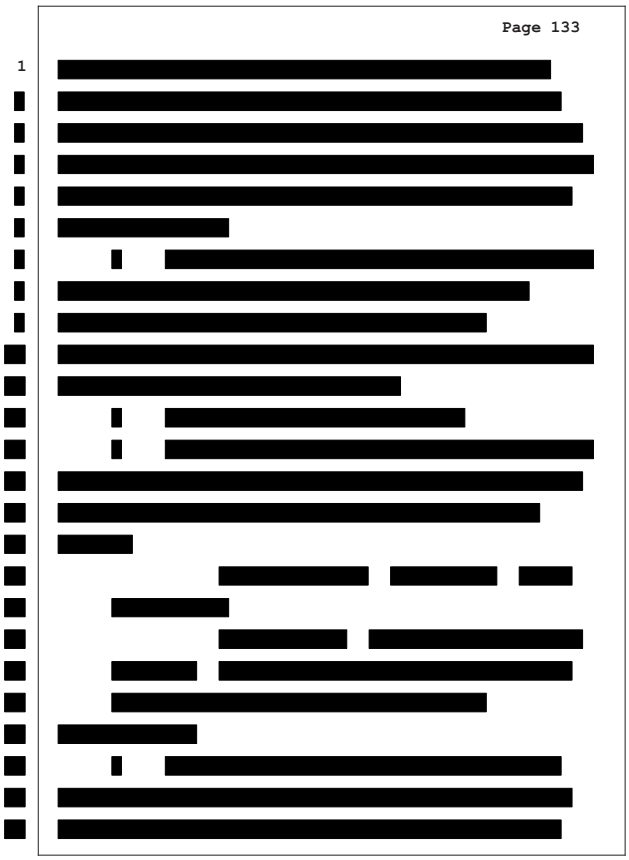
Q I'm just asking now about Exhibit J --

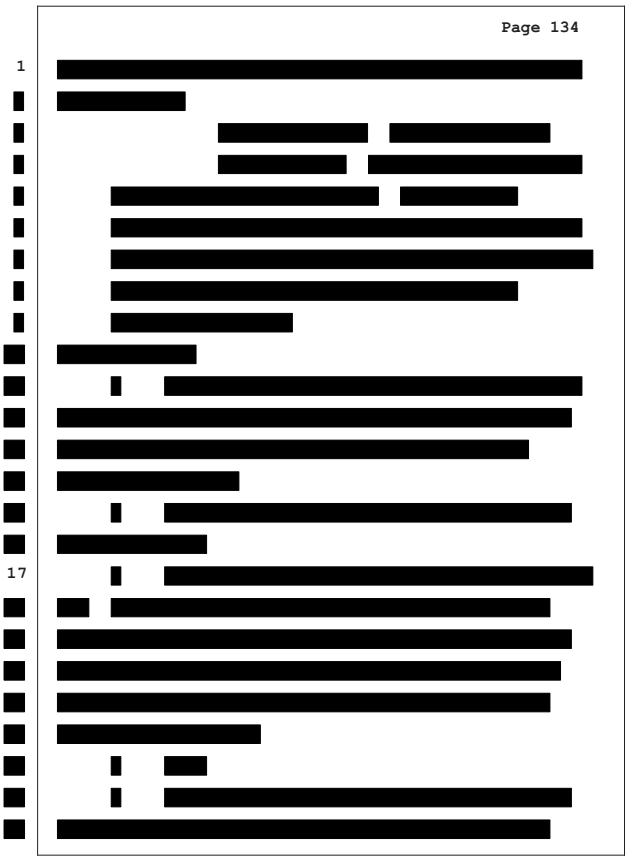
A All right.

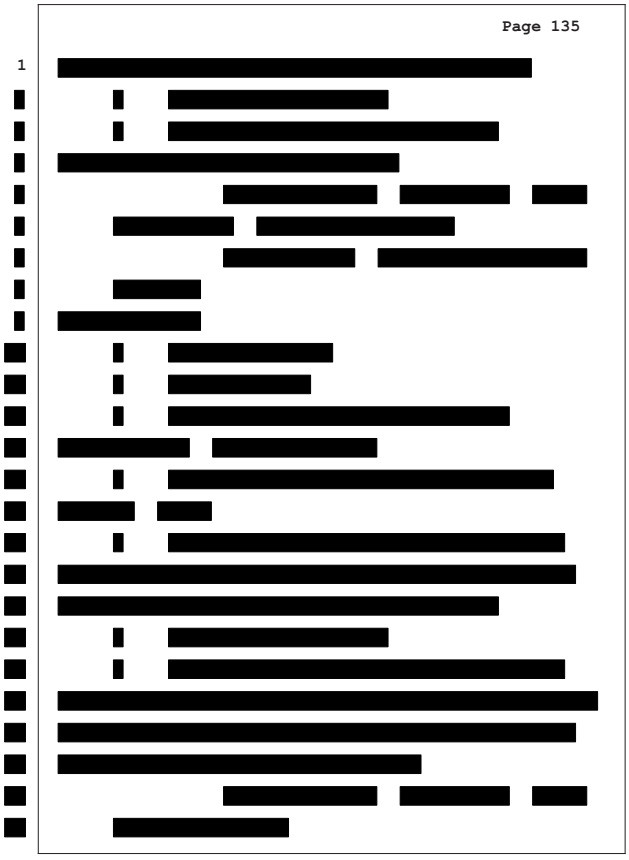
Q -- this chronology in a vacuum. Are you with me?

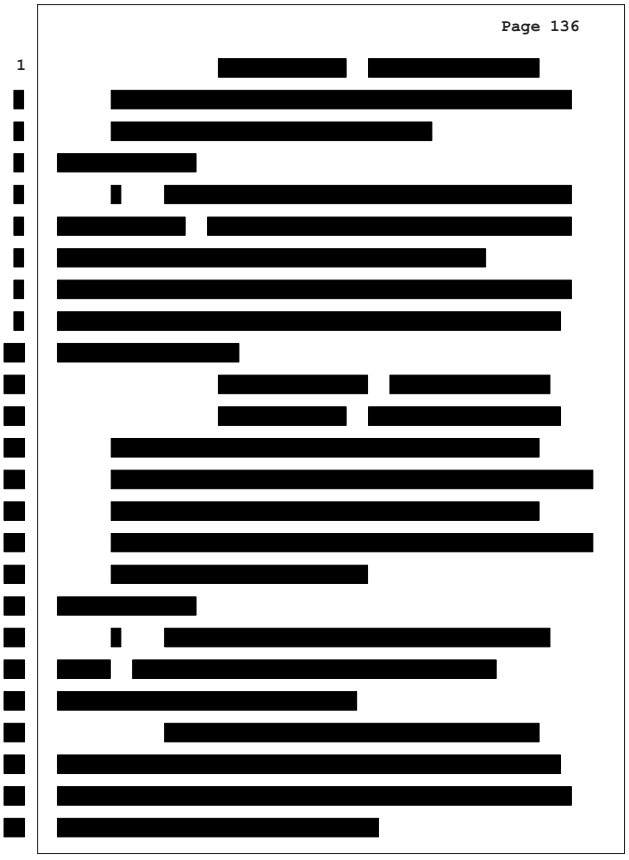
A Yes.

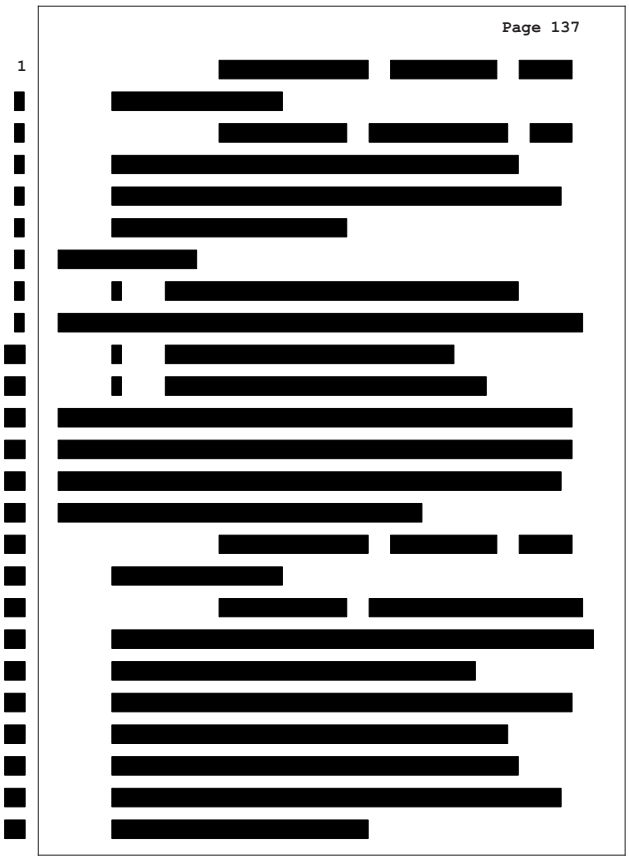


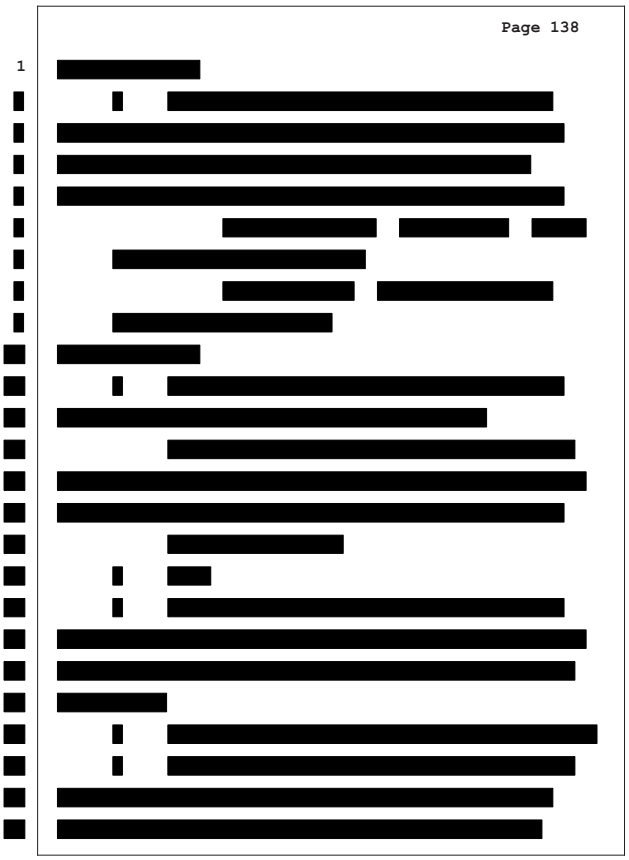


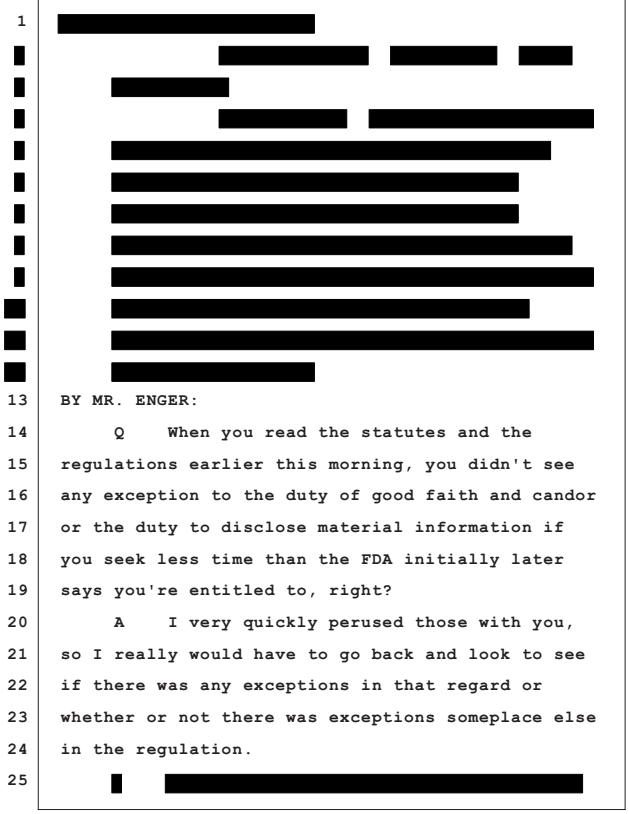








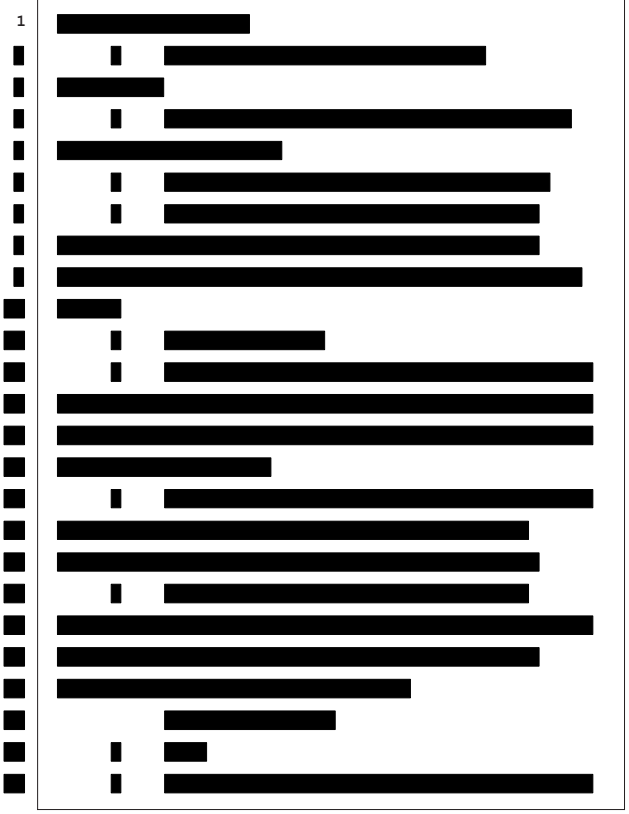




BY MR. ENGER:

Q When you read the statutes and the regulations earlier this morning, you didn't see any exception to the duty of good faith and candor or the duty to disclose material information if you seek less time than the FDA initially later says you're entitled to, right?

A I very quickly perused those with you, so I really would have to go back and look to see if there was any exceptions in that regard or whether or not there was exceptions someplace else in the regulation.



[redacted]

Q Really the only people that would know if they were diligent during the entirety of the study is the study's participants?

A It would be the applicant as well as the principal investigators, as well as the actual patients that were included in the trial, but again there's a lot of activities that are supportive with respect to review and analysis of data, data entry, data quality situations that would be a part of the conduct of any clinical trial. So just not -- just necessarily not seeing patients on a given day would not mean that a company was not being diligent in the conduct of a clinical trial.

Q Let's look at the last column of this chart. What information is indicated that would be included in that last column?

A Document location for report, data listings, case report forms, technical study report, or synopsis.

[redacted]

[redacted]

Q What do you mean by the "regulatory review period determination"?

A That's the -- it's the information that we've talked about today with respect to the testing phase and the review phase, the applications.

Q This statute only permits the FDA to consult its records and experts to determine the length of the product's regulatory review period, right?

A I believe so, yes.

Q It doesn't authorize the FDA to consult its records or experts to verify the diligence of a, of an applicant during a patent term extension?

MR. MAJCHRZAK: Objection.

BY MR. ENGER:

Q Right?

A I don't believe it does.

Q In the next sentence, you cite 21 C.F.R. Section 60.36(a).

Do you see that?

A Yes.

Q And you cite it for the proposition that the FDA consider -- can consider the "applicant's actions" to determine whether it was diligent?

A Yes.

Q Does that regulation -- when is that regulation considered?

A In looking at the entire regulatory review period.

Q Isn't that regulation actually under Subpart D relating to due diligence petitions?

MR. MAJCHRZAK: Objection.

THE WITNESS: I would have to review that in its entirety and look at that portion of the regulations. I don't know it

offhand.
BY MR. ENGER:
Q Let me represent to you that this regulation is under Subpart D relating to due diligence petitions.
Are you with me?
A No. I would have to read it. I would like to read it for myself.
(Exhibit 10 was marked for identification.)
BY MR. ENGER:
Q I've just handed you what's been marked as Exhibit 10. This is 21 C.F.R. 60.36.
A Correct.
Q Do you see -- I guess it's a little difficult. Do you see that Section 60.40 corresponds to Subpart E, due diligence hearings?
A Yes.
Q So the regulations under Subpart E only apply if a due diligence hearing occurs, right?
MR. MAJCHRZAK: Objection. Legal conclusion.
THE WITNESS: That's under "Request For Hearing." It appears that to be the case, yes, yes.

BY MR. ENGER:
Q And I apologize that this Exhibit 10 doesn't include subsequent regulations, but can't you tell that Section 60.36 is part of Subpart D?
A I would presume that would be the case, yes.
Q And do you know that Subpart D corresponds to due diligence petitions?
A I will take your word for that.
Q So 60.36 under Section, Subpart D related to due diligence petitions only comes into effect if somebody actually files a due diligence petition, right?
MR. MAJCHRZAK: Objection. Legal conclusion.
THE WITNESS: I am not ready to opine on this without further evaluation and study.
BY MR. ENGER:
Q That makes sense, though, what I'm saying, right?
A It may make sense.
Q You know that no one filed a due diligence petition in the Namenda patent term extension, right?

A I believe that to be the case.
Q So 60.36 doesn't really have any applicability to the Namenda patent term extension application, does it?
MR. MAJCHRZAK: Objection. Legal conclusion.
THE WITNESS: Although FDA may evaluate that. I mean they, they can't divorce themselves from looking at these types of standards and making these types, in any of the determinations.
BY MR. ENGER:
Q Are you aware of any statute or regulation that specifically authorizes the FDA to consider all of its files and not just the things in the patent term extension application to determine due diligence?
A I'm not aware of that.
[redacted]

[redacted]

EXHIBIT 318

** H I G H L Y C O N F I D E N T I A L **
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 1:15-cv-07488-CM
----------x

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION

----------x

November 7, 2017
9:02 a.m.

Continued Videotaped Deposition of FOREST LABORATORIES, LLC; ACTAVIS, PLC; FOREST LABORATORIES, INC.; and FOREST LABORATORIES HOLDINGS LTD., by CHARLES RYAN, Ph.D., taken by Plaintiffs, pursuant to Notice, held at the offices of White & Case LLP, 1221 Avenue of the Americas, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

[redacted]

Q. Were later versions of this document prepared?

A. I don't believe so. I'm not sure what you mean by that.

MR. TOTO: I mean, there is two to begin with. I'm sorry to interrupt. Maybe we cn break it down if you are going to talk about different versions or something.

MR. OPPER: Right.

Q. Dr. Ryan, you are also an attorney; is that correct?

A. Yes.

Q. And what is your understanding of what a Rule 30(b)(6) witness is?

A. So a 30(b)(6) witness is an individual who is testifying on behalf of the corporate entity, in this case Forest Laboratories, and you give a 30(b)(6) notice to someone when you are not giving a name, but you are giving a topic and you are saying please bring somebody forward who can testify on behalf of, in this case, the entity for a particular subject.

Q. Okay. And today you are testifying on behalf of Forest Labs; is that correct?

A. Right.

Q. What did you do in preparation for today's deposition?

A. I met with counsel.

Q. By "counsel"?

A. From White & Case.

Q. Mr. Toto and --

A. Mr. Johnson.

Q. -- Mr. Johnson?

A. Uh-huh.

Q. Did you speak with Eric Agovino about this document?

A. Yes.

Q. When did you speak with him?

A. Yesterday.

Q. Was this a face-to-face meeting?

A. No. He lives in California, so it was by phone.

Q. Did you speak with David Solomon about this -- let me withdraw that and just ask you, who did you speak with in preparation for today's deposition other than Mr. Agovino and counsel you've already identified?

A. Those are the three individuals I spoke with.

Q. So you didn't speak to David Solomon, correct?

A. I did not speak to David Solomon.

Q. You did not speak to Rachel

Mears?

A. No.

Q. You did not speak to Herschel Weinstein?

A. No.

Q. You didn't speak to any of Forest's outside counsel?

A. That's correct.

MR. TOTO: Well, except the ones mentioned I guess.

MR. OPPER: Yes.

[redacted]

Q. And when was that meeting?

A. That meeting would have been in February of 2010.

Q. Was there a meeting on February 11th, 2010?

A. I don't know if it was

specifically on February 11th or not.

Q. But there was a meeting [redacted] on or about 2010 with respect to settling the patent litigation?

A. That's right.

[redacted]

Q. Did you attend that meeting?

A. Yes.

[redacted]

[redacted]

[redacted]

[redacted].

Q. Dr. Ryan, in your role as an attorney, you are a litigator; is that correct?

A. Yes.

Q. And isn't your understanding that FRE 408 has to do with settlement negotiations between a party?

A. Yes.

Q. And the fact that any settlement negotiations, to the extent they are covered by 408, are confidential?

MR. TOTO: I object to form. You may answer.

A. Yes.

[redacted]

Q. Well, why would it -- why was there an endorsement of subject to FRE 408

on [redacted]?

A. Because in the event that we felt that we needed to share it, we wanted to have the document properly marked.

[redacted]

Q. And there are I count six bullet points underneath?

A. Yes.

Q. The first bullet point says "Sixteen ANDA filers since October 2007, fourteen were 'first filers.'"

Was that an accurate statement as of February 11, 2010?

A. I believe so, yes.

[redacted]

Q. The next bullet point says "Eight defendants have settled for a total of 7.75 million for attorney fees, three months early entry, and MFN."

Do you see that, sir?

A. Yes.

Q. What is MFN?

A. Most favored nation.

[redacted]

Q. The next bullet point says "Two defendants settled for no early entry and no attorney fees."

Is that a correct statement?

A. I believe so, yes.

Q. The next bullet point, "Three defendants withdrew their ANDAs."

Is that a correct statement?

A. I believe so, yes.

Q. And the last bullet point is "One defendant entered into a consent judgment."

Is that a correct statement as of February 11, 2010?

A. Yes.

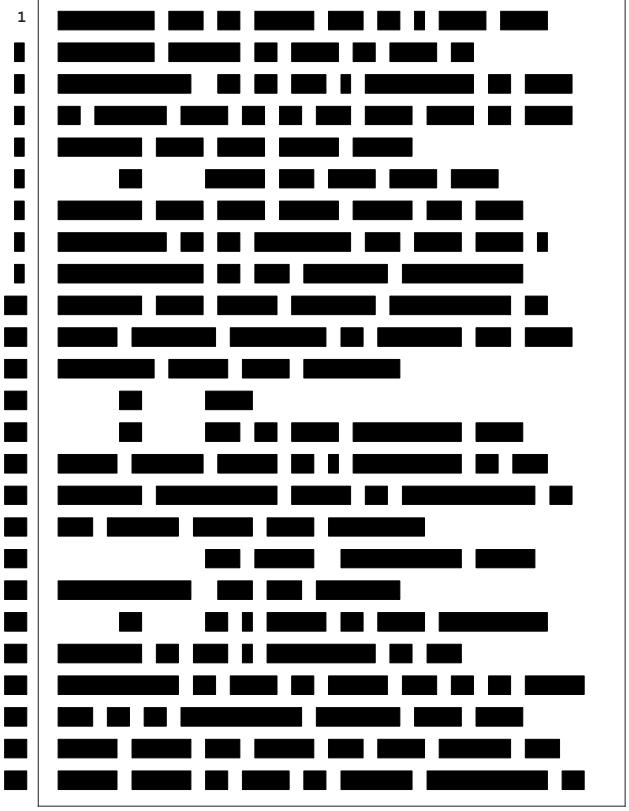
[redacted]

Q. Would you turn to the next slide, please. It says Case Calendar.
A. Yes.
Q. And there are three bullet points?
A. Yes.
Q. Do you see those?
A. I do.
Q. Are those three bullet points accurate as of February 11, 2010?
A. I believe so, yes.
[redacted]

[redacted]
Q. The information provided on this page refers to Forest's current settlement offer as of February 11, 2010?
[redacted]
A. Yes.
[redacted]

[redacted]

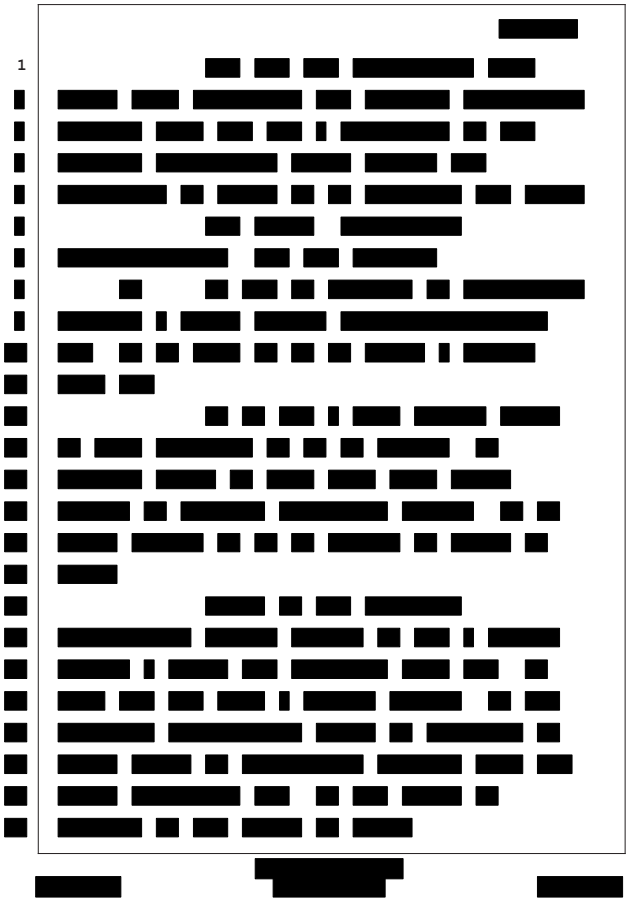
[redacted]

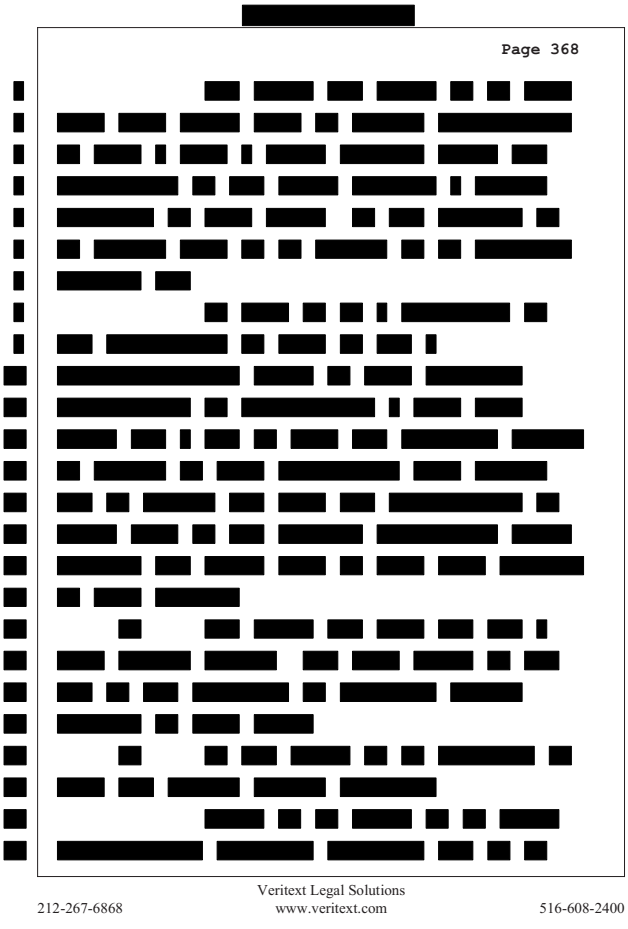


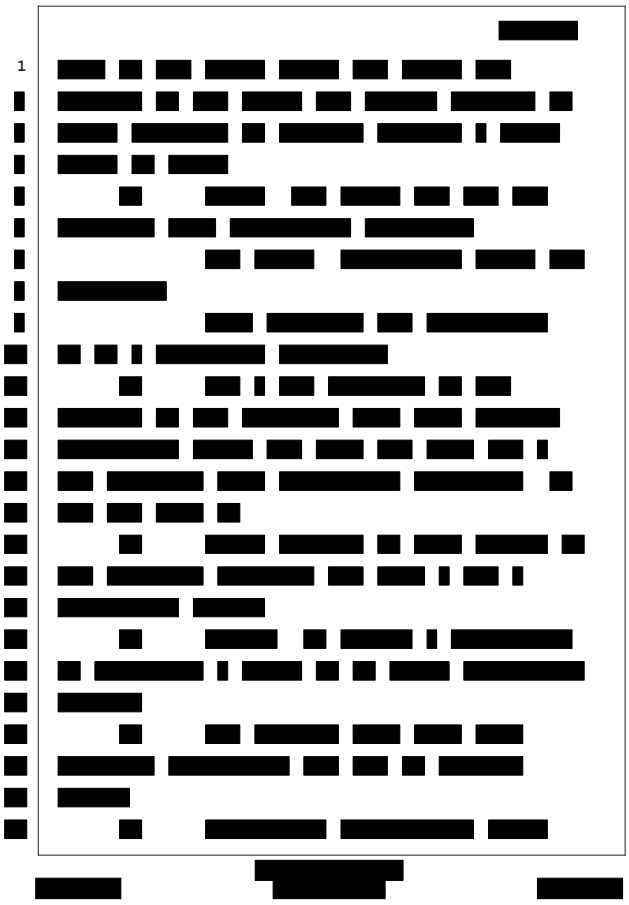
Q. Who told you that, sir?

MR. TOTO: Objection, argumentative, lacks foundation.

A. So it has always been the philosophy of the senior management team at Forest that we're not going to do business transactions with people that we're in litigation with.







Q. But what about the settlement agreement that is contained in this document that is dated February 11, 2010, did you put that together?

MR. TOTO: Objection, misstates the document. You may answer.

A. I did not put this slide together, no.

Q. But you reviewed it, correct?

A. Yes, I saw it.

Q. And you didn't make any changes to it; is that correct?

A. I did not make changes to it, no.

Q. Would you explain that to me, please?

A. Sure. So under the Hatch-Waxman statute, first filers share 180 days of market exclusivity, and there are different events that will trigger that. One would be that if the patent is found invalid, for example, by the Federal Circuit, then that would allow all of those first filers to enter the market, meaning to sell their generic in the marketplace.

EXHIBIT 319

** H I G H L Y C O N F I D E N T I A L **

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 1:15-cv-07488-CM

----------x

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION

----------x

September 7, 2017

8:15 a.m.

Videotaped Deposition of FOREST LABORATORIES, LLC; ACTAVIS, PLC; FOREST LABORATORIES, INC.; and FOREST LABORATORIES HOLDINGS LTD., by CHARLES RYAN, Ph.D., taken by Plaintiffs, pursuant to Rule 30(b)(6) Notice, held at the offices of Garwin Gerstein & Fisher LLP, 88 Pine Street, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

Q. In 274, Forest is discussing the study number [redacted]. Do you see that?
A. Yes.
Q. And in paragraph 275, it's the same study?
A. The same study, yeah.
Q. In paragraph 276, the same study?
A. Same study.
Q. Paragraph 277, same study?
A. Yes.

But in terms of studies that -- these are the two that are identified, yes.
Q. So in those paragraphs that appear on the pages that you identified, there are no other studies referenced, correct?
A. That's what I was looking for. It doesn't appear that they reference other studies in there, no.
[redacted]
MR. JOHNSON: Objection, lacks foundation.

A. Are you asking what was Forest's calculation that they submitted to the FDA?
Q. Correct.
A. Let's see if -- I don't recall it off the top of my head. I apologize. I will see if I can find it in this document.
[redacted]
MR. JOHNSON: Objection.
[redacted]

[redacted]

[redacted]

MR. JOHNSON: Counsel, I don't know if it is a decent time for a break or not. It has been a little bit over an hour

we have been going.

MS. JONES: Sure, we can take a break if you are ready to.

THE VIDEOGRAPHER: We are going off the record. The time is 10:50. This ends disk two.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record. The time is 11:03. This is disk three.

BY MS. JONES:

Q. I would like to go ahead and mark as Ryan Exhibit 11 a document entitled Supplemental Scheduling Order.

(Ryan Exhibit 11 marked for identification.)

Q. And just to provide a little context, this is in connection with topic 10 on which you have been designated, which is your estimate at or before the time of settlement of the likely future timing of the Namenda patent litigation absent settlement.

And so Ryan Exhibit 11 is Document No. 117, filed July 17th, 2008.

Do you see that?

A. I do.

Q. And in this Supplemental Scheduling Order, it says that "It is ordered that this matter is scheduled for a five-day bench trial beginning 9 a.m. on April 5th, 2010 before Chief Judge Gregory M. Sleet."

Do you see that?

A. I do.

Q. And then I would like to go ahead and hand you what has previously been marked Mears 10, Mears Exhibit 10.

And this document is a letter that was sent to the Court dated March 16th, 2010. Do you see that?

A. I do.

Q. And it is addressed to Chief Judge Sleet?

A. Yeah.

Q. And in this letter, Mylan's counsel is requesting that the Court preserve the April 5th trial date. Do you see that?

A. Yes.

Q. And this letter states that it was submitted with the consent of plaintiffs, correct?

A. Yes.

Q. And plaintiffs would have included Forest, correct?

A. Yes.

Q. So this letter was sent with the consent of Forest?

A. Yes.

[redacted]

[redacted]

Q. And the extension, the patent term extension that was ultimately granted by the FDA was the maximum extension allowable; is that correct?

MR. JOHNSON: Objection to form, foundation.

A. So we were granted five years of patent term extension which statutorily is the longest period of time available, yes.

Q. And do you have any reason to doubt that that extension -- that patent term extension extended the '703 patent to April 15th, 2015?

A. No.

Q. Does that sound right to you?

A. Yes.

[redacted]

Q. If the pediatric exclusivity has been granted prior to that four-year date?

A. That's right.

Q. And is it correct that the four-year date, in your understanding, the four-year date is for a generic who is filing a Paragraph IV certification ANDA?

A. Yes.

Q. And if it were -- well, let's back up a little bit.

Could you explain your understanding of what a Paragraph IV certification is? I know I used the term, but I think we know what we are talking about, but I would like you to explain the

meaning.

MR. JOHNSON: Objection, calls for expert testimony.

A. Sure. Under the Hatch-Waxman statute it is pretty comprehensive in terms of the roles and responsibilities of both parties, and one of them is that when a generic chooses to pursue an ANDA as part of that, if there is a patent listed in the Orange Book, they can file at, and if it is a five-year NCE, they can file at year four.

If there is not a patent they have to wait until the fifth year. But in so doing one of the obligations is to send a fairly detailed letter to the patent holder and the NDA applicant, an explanation as to their view about the patents that have been listed in the Orange Book, the validity, infringement.

Q. Why the generic believes the patent is either invalid or the generic product, proposed generic product, does not infringe the patent?

A. That's right.

Q. Or patents, if there are more than one, right?

A. Correct.

Q. And so if a generic is filing an ANDA on the fourth day -- I'm sorry, on the four-year anniversary of NCE that would be a Paragraph IV certification ANDA; is that right?

A. That's right.

[redacted]

Q. And do you have any understanding of what the incentives or benefits might be for a generic ANDA filer to file an ANDA with a Paragraph IV certification on the first day that they are eligible to file it?

A. Sure.

MR. JOHNSON: Objection to form, also legal conclusion, expert testimony.

Q. I'm asking your understanding of the 180-day exclusivity period.

MR. JOHNSON: Same objections.

A. Again, as I stated before, under the Hatch-Waxman statute, there's a number of guidance and standards about things and one of them, that if the first filer, so someone who files in this case on year four of a five-year, they get 180 days of market exclusivity before any other subsequent filers. So they get six months essentially to be, assuming their ANDA gets approved, to be on the market.

Q. Exclusive of other generics?

A. Correct.

Q. The brand would have the right to continue selling the brand?

A. Yeah, you can always sell your product.

Q. And in the context of Namenda, where there were a dozen or so generics who filed ANDAs with Paragraph IV certifications on that first day, do you have any understanding of how that works with the generic, with the 180-day

exclusivity period?

MR. JOHNSON: Dr. Ryan, I think he is asking you a general question. It's not calling for privilege. But just let me caution you not to reveal any privileged communications or attorney work product in answering the question, which I will also object to as calling for expert testimony.

A. So under the statute, all the first filers that would file on that four-year anniversary date, the first available date that you could file an ANDA, they would share that market exclusivity period of 180 days with the other filers, again, assuming their ANDA gets approved.

Q. And is it generally true to your knowledge, if you don't know I'm sure you'll tell me, that the more generic competitors there are on the market with an AB rated equivalent product, the lower the generic price would be in the market?

MR. JOHNSON: Objection, speculation, expert testimony.

A. So it's not an area that I work in, but it is my understanding that with

greater competition on the market, it impacts price.

Q. And the more generic competitors in the market, the more the market is divided among those various competitors typically; is that correct?

MR. JOHNSON: Same objections, also vague.

A. Yes. So the more generics that are on the market, the more the market, you know, is fragmented between the various generics.

Q. You would expect the market share of each generic to be less, correct?

MR. JOHNSON: Same objections.

A. Not necessarily. I don't work in the generic industry, but it's not as if it's a piece -- a slice of pizza and everyone has the same size. So someone could capture much more market share than somebody else for any number of reasons.

Q. And those reasons would typically be related to competition in the market as far as you know?

MR. JOHNSON: Same objections.

A. It could be related to lots of things, quality, previous relationships, any number of reasons why someone would choose one generic over another.

Q. When the dozen or so generics filed their Paragraph IV certification ANDAs for Namenda did you have any expectations that the market would behave any differently than it typically did, the generic market I'm talking about?

MR. JOHNSON: Objection, vague, speculation, expert testimony.

A. To be honest with you, it's not something I ever thought about.

Q. Do you recall which of -- periodically for the rest of the afternoon I may refer to those dozen or so generics who filed on the first day they were eligible as first filers.

A. Okay.

Q. Is that okay?

A. Sure.

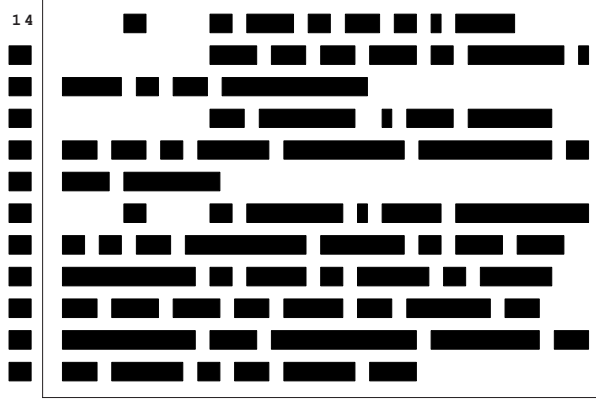
Q. So do you recall which of the first filers Forest sued for patent infringement?

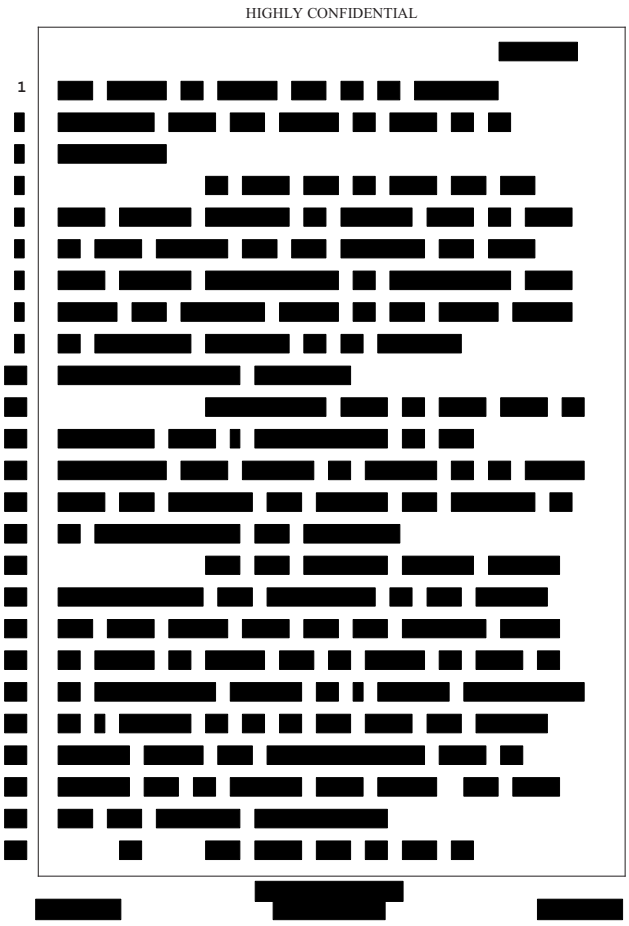
A. I think we sued all of them.
Q. Do you remember which ones they were? Again, it's not a quiz.
A. No.
Q. I will show you some documents later.
A. No.
Q. And you mentioned the Paragraph IV certification notice to Forest. Each one of those first filers provided a notice to Forest that they had filed an ANDA with a Paragraph IV certification?
A. Yes.
Q. And in each one of those notices to Forest explained that the generic either contended that the patent, the '703 patent, was invalid or that their proposed product wouldn't infringe the '703 patent; is that correct?
MR. JOHNSON: Objection to form.
Q. Or both.
A. Typically it is almost always the same, which is that we don't infringe and if we do infringe the patent is

invalid.
Q. You don't recall any exceptions for any of the first filer notices that you received for Namenda?
A. I don't recall an exception ever.
Q. Do you recall if there were any generic companies that filed Paragraph IV ANDAs after the first filers did?
A. My recollection is that there were maybe one or two, but there were a couple of people that did file after.
Q. Do you recall who they were?
A. No, I don't recall who they were.
Q. Do you know if Forest filed patent infringement suits against them?
A. I think we did, but I -- I would imagine we did but I can't say for sure.
Q. Are you familiar with the term 30-month stay in the context of Hatch-Waxman litigation?
A. Yes.
Q. What's your understanding of

what a 30-month stay is?
MR. JOHNSON: Objection, expert testimony. Go ahead.
A. So a 30-month stay is a period of time in which the FDA is not going to approve, and while you are litigating it you have essentially like a year and a half without concern about the ANDA getting approved.
Q. Two and a half years?
A. Two and a half years, sorry.
Q. Do you know or recall when the 30-month stays that were triggered by Forest's patent infringement suits with respect to Namenda IR were set to expire?
MR. JOHNSON: Objection, foundation.
A. I'm trying to think of the year. So it was April -- it was almost a year after the last settlement, so whatever month we settled with Mylan, was July, I think it was April the following year. I think that's right.
Q. Did, I probably should have asked this first, or before the last

question, did Forest file its patent infringement suits against all of the first filers in time to trigger a 30-month stay for each as far as you recall?
MR. JOHNSON: Objection, foundation.
A. I don't actually recall.
Q. Earlier this morning you identified two firms that represented Forest as outside counsel in the patent infringement litigations, Kirkland & Ellis and Jones Day, are those the two?
A. Yes.

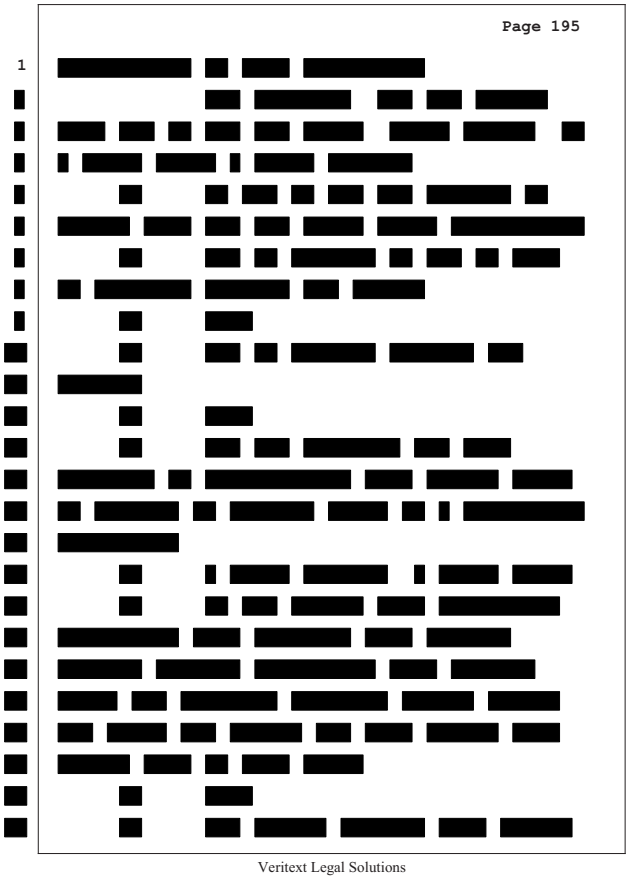




Q. To your knowledge, were there any negotiations with any of the generic ANDA filers that did not result in a settlement of the patent litigation involving that generic?

MR. JOHNSON: Objection. You can answer.

A. No.



Q. Dr. Ryan, take your time to review that document. My first question is if you recognize it. Answer when you're ready.

I will represent, while you are looking at that, that the document is a printout from the Securities and Exchange Commission website.

MR. JOHNSON: I will just object to the extent this document hasn't been produced in this case and we haven't had the opportunity to review it before

Dr. Ryan's being examined on it.

A. So it appears to be a 10-Q for the quarter ending September 30th, 2009 for Forest Laboratories, Inc.

Q. Do you know what a 10-Q is, Dr. Ryan?

A. Yes.

Q. Did you have any role in preparing this -- well, strike that.

You were at Forest, correct, during the quarterly period ended September 29th -- sorry, September 30th, 2009, correct?

A. Yes.

Q. Do you recall having any role in drafting any portion of this document?

A. Yes.

Q. And which portions?

MR. JOHNSON: Well, objection.

A. So with any public communication by Forest, whether it is a 10-Q, 10-K, press release, any language with respect to intellectual property would either have been provided by me, or, at the very least, have been reviewed by me.

So I see that there are things with respect to, for example, on page 14, legal proceedings, talking about the Lexapro patent infringement dispute, I would have either provided that language, or, at the very least, reviewed it before it was disclosed, but I don't recall anything in particular relative to this filing.

Q. And you pointed out some language on page 14, it's the Legal Proceedings section, number 12, and it continues on to page 15 and there is some language there about the Namenda patent lawsuits. Do you see that?

A. Yes.

Q. Do you recall having any role in preparing or reviewing this prior to the filing?

A. I would have had a role. Sitting here today, I can't recall specifically this filing or this particular passage, but I would have -- I would have participated in this, or at least reviewed it.

Q. Do you have any reason to believe that any of the representations in this section are incorrect?

MR. JOHNSON: Objection.

Q. Or inaccurate?

A. No.

Q. Okay. You can set the document aside.

Dr. Ryan, during settlement negotiations with the various generics, do you recall discussions about when the generic companies would be permitted to launch their generic versions of Namenda IR?

MR. JOHNSON: You mean discussions with the generics?

MR. RAPHAEL: Yes.

A. Yes.

Q. Can you tell me what you recall about those discussions?

A. I recall that we had taken the position that they could come onto the market three months earlier than the expiry of the patent.

Q. And at the time of the

negotiations, Forest had not applied for or been granted pediatric exclusivity, is that correct, for the '703 patent?

A. I don't recall.

Q. Do you recall any generics attempting to negotiate for an earlier launch date than three months prior to the expiration of the '703 patent?

A. So we certainly had in any settlement negotiation we talked about a variety of things including launch date. I would be surprised if none of them -- none of them ever tried to advance for more. I don't really recall. It was something that we were pretty firm on out of the gate.

Q. Do you recall generics expressing concern to you about other generics getting better deals or earlier launch dates in negotiations with Forest?

A. Yes.

[redacted]

[redacted]

Q. So it was an option?
A. It was an option, yes.
Q. That they requested and Forest granted?
A. They demanded.
Q. Do you recall any specifics with other generics concerning -- strike that.

Do you recall any discussions with other individual generics about concerns regarding other generics getting better deals or earlier launch dates?
A. Yes.
MR. JOHNSON: Objection.

[redacted]

[redacted]

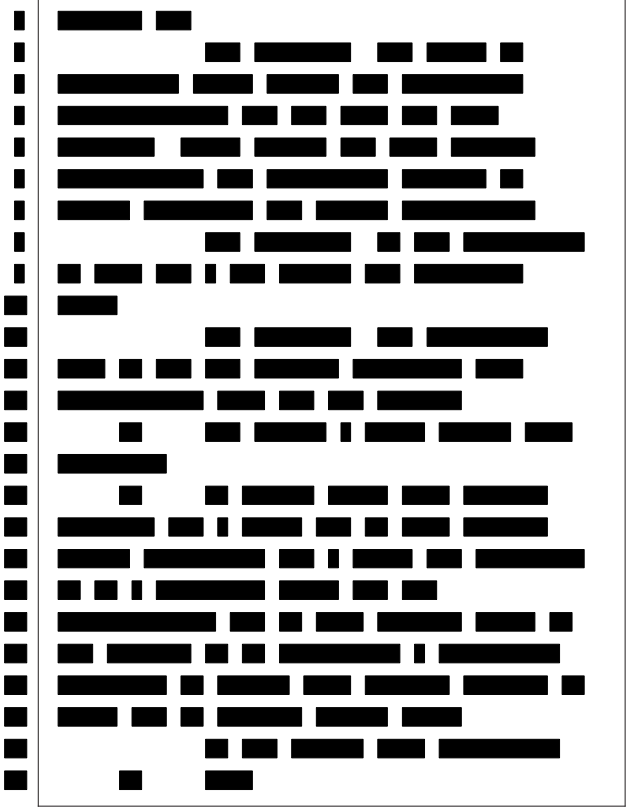
Q. Was Forest concerned about any one or more of the generics prevailing in the patent litigation?
MR. JOHNSON: Objection to form. And I'm going to instruct you not to answer on grounds of attorney-client privilege and work product.
THE WITNESS: Okay.
Q. You are going to follow that instruction?
A. Yes.

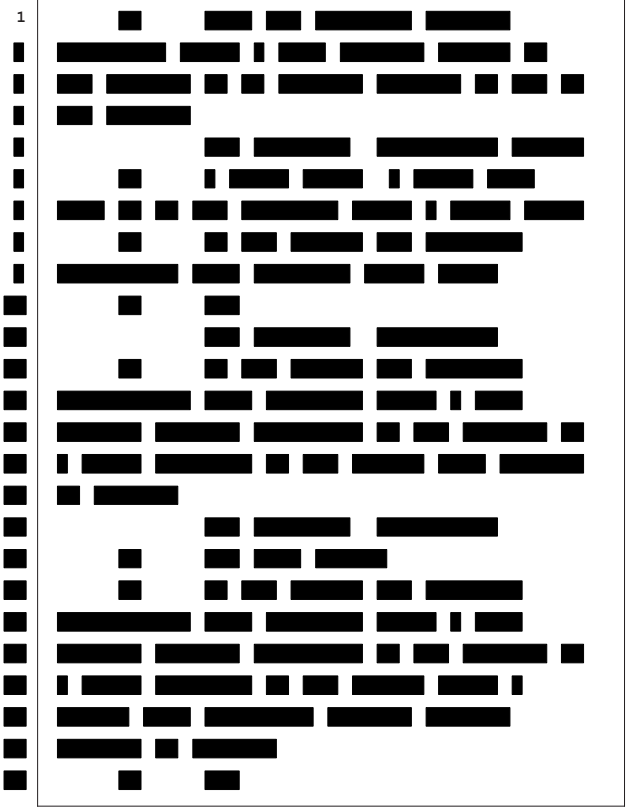
[redacted]

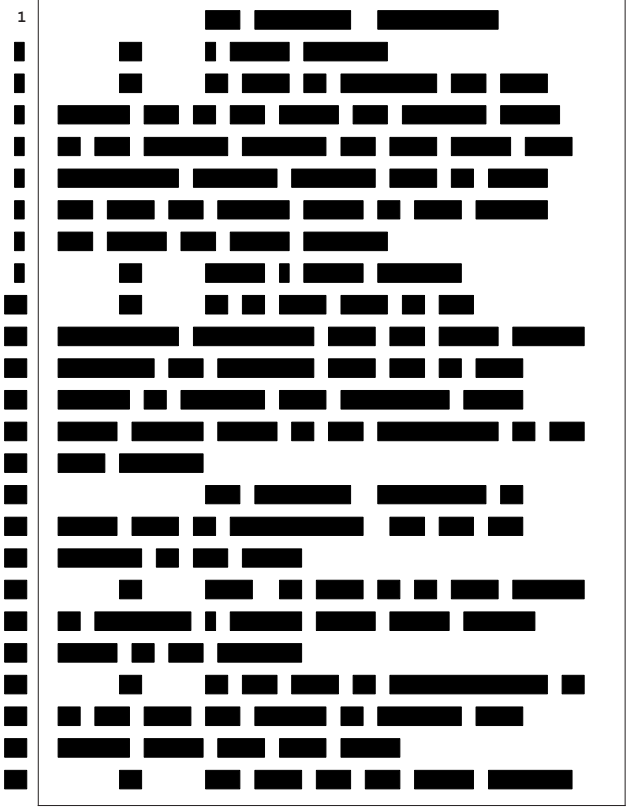
[redacted]

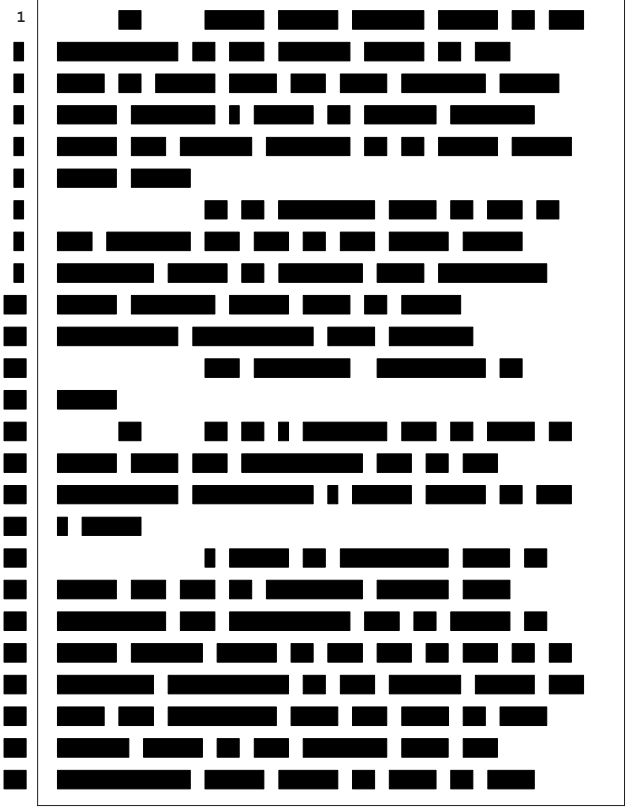
Q. Do you know what at-risk entry refers to?
A. Yes.
Q. What is that?
MR. JOHNSON: Objection.
A. So it's when a generic company has an approved ANDA, but there has not been a final disposition by the court on the patent dispute, so they call it an at risk, because if the generic decides to go ahead and launch and then loses that patent challenge, they risk subsequent damages from the branded company for basically infringing the patent.
Q. As a result of the infringing sales?
A. Correct.

[redacted]









Q. And I assume that would mean that you don't recall any specific discussions about that with generics?

A. That's right, I don't recall that.

Q. In settlement negotiations with the generics, did Forest tell any of the generics that it wanted them to acknowledge that the '703 patent was valid?

A. Yes.

Q. Do you recall specific discussions about that?

A. I recall that we had discussions about that. I don't recall the specifics of it, but it is something that I remember did come up as part of the settlement discussion.

Q. You don't remember specific details?

A. No.

Q. Do you recall if they did in fact acknowledge that in the settlement agreements?

A. I don't recall specifically. It's in there. They did.

[redacted] [redacted]

THE VIDEOGRAPHER: We are going off the record. The time is 1:40. This ends disk three.

(Recess taken.)

(Ryan Exhibit 16 marked for identification.)

THE VIDEOGRAPHER: We are back on the record. The time is 1:55. This is disk four.

BY MR. RAPHAEL:

Q. Dr. Ryan, you have been handed what the reporter has marked as Exhibit 16.

My first question, again, is if you recognize the document. I will give you a minute to review.

And while you do that, I will note for the record that it has Bates numbers FRX-AT-04304905 through 914.

Do you recognize this document, Dr. Ryan?

A. Yes.

Q. It appears to be -- it appears to be meetings of minutes -- strike that.

It appears to be minutes of a

meeting of the Forest Laboratories Holding, Ltd. board of directors; is that correct?

A. Yes.

Q. And that meeting was held it appears on March 12th, 2008; do you see that?

A. Yes.

Q. In Bermuda; do you see that?

A. Yes.

Q. Do you recall being present at that meeting?

A. I recall that I was participating by phone.

Q. Oh, I see. Hopefully you were in a nicer place than Bermuda.

A. I don't think so.

MR. JOHNSON: I'm not sure there are.

Q. Did you have any role or participate in the drafting of these minutes, Dr. Ryan?

A. The preparation of the minutes, yes.

Q. And I will note that there are large portions of this exhibit that are

redacted, so there are only -- I guess we're talking about the portions that aren't redacted.

Which portions did you have a role in preparing?

MR. JOHNSON: I just caution you, Dr. Ryan, not to reveal any privileged information in answering. But go ahead.

A. So I would have provided just --

MR. JOHNSON: Again, a caution regarding privilege or work product, but if you can answer without that.

THE WITNESS: So can I answer in terms of what I would have done?

MR. JOHNSON: I think you can answer generally as to what you would have done, but if you provided any legal advice to Forest or the board regarding these minutes or if you counseled anyone on what they should say, then please don't discuss the substance of any such attorney-client communications.

THE WITNESS: Okay.

A. I would have drafted the

paragraph on page 7 and may have -- may have participated in drafting what's on page 3.

Q. Page 7 is the page with Bates ending 911, correct?

A. Right.

[redacted]

[redacted]

(Ryan Exhibit 23 marked for identification.)

Q. It has Bates numbers FRX-AT-04269110 through 9434.

Do you recognize this document, Dr. Ryan? And I will give you a while to look at it, as long as you need.

A. It looks like an e-mail with settlement agreements attached.

[redacted]

Q. And the date is August 24th, 2009; do you see that?

A. Yes.

Q. And any reason to believe that you didn't receive this e-mail from Eric Agovino on the date shown here?

A. No.

Q. With the exception of the settlement chart, which I believe was withheld from production, it appears that the attachments to this e-mail follow, and specifically they are draft agreements, settlement and license agreements for Wockhardt, Apotex, Amneal, Cobalt, Lupin, Mylan, Orchid, Sun, Teva and Upsher-Smith.

Do you agree with that?

A. Yes.

Q. Do you know why Mr. Agovino is sending these draft agreements to Mr. Jochum?

MR. JOHNSON: Dr. Ryan, you can answer that yes, no, I don't know.

A. I don't know.

Q. Are these, are the attachments to the e-mail, are they all draft

agreements that Forest sent to the respective generics in August 2009?

A. It appears so.

Q. Other than having not read each one, is there anything that stands out that would make you think that's not what the attachments are?

A. No.

Q. And were each of these draft agreements prepared by Forest or someone acting on Forest's behalf?

A. Yes.

[redacted]

[redacted]

Q. Do you know if each of the generics requested each of those provisions?

And I say, by each of the generics, I'm referring to the generics whose agreements are attached to this e-mail.

A. Yes.

[redacted]

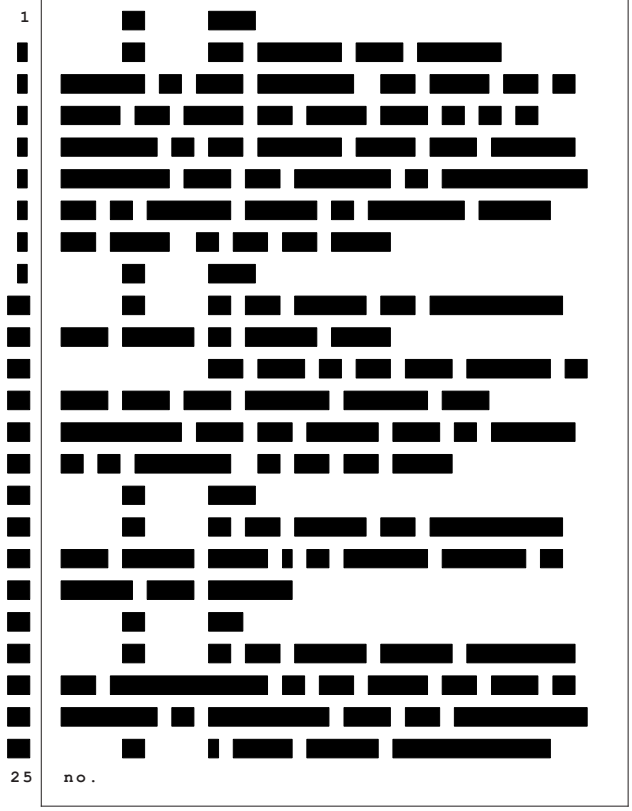
Q. Do you have any reason to doubt that these were the amounts of attorneys' fees that Forest offered to each respective generic as of the date of this e-mail in

settlement of the patent litigation?
A. No.
[redacted]
(Ryan Exhibit 24 marked for identification.)
Q. Exhibit 24 has Bates numbers FRX-AT-03626726 through 763.
Do you recognize this document, Dr. Ryan?
A. It's an e-mail.
[redacted]

Q. And the date is August 27th, 2009. Do you recall receiving this e-mail in August 27th, 2009?
A. No.
Q. Any reason to believe that you didn't?
A. No.
Q. Is this a document that Forest maintains on its e-mail server in the ordinary course?
MR. JOHNSON: Objection.
A. I assume so.
[redacted]

[redacted]
Q. Why did Forest need to be able to disclose the license agreement terms to other defendants?
A. My recollection is that the other defendants are fierce competitors and they don't trust each other, and so it was something that was put in there in the event that we had to actually, you know, show an agreement to another defendant.
[redacted]

[redacted]
Do you recognize this document? And it's a long one, so you can take your time to review.
A. It appears to be an e-mail with two settlement agreements attached.
[redacted]



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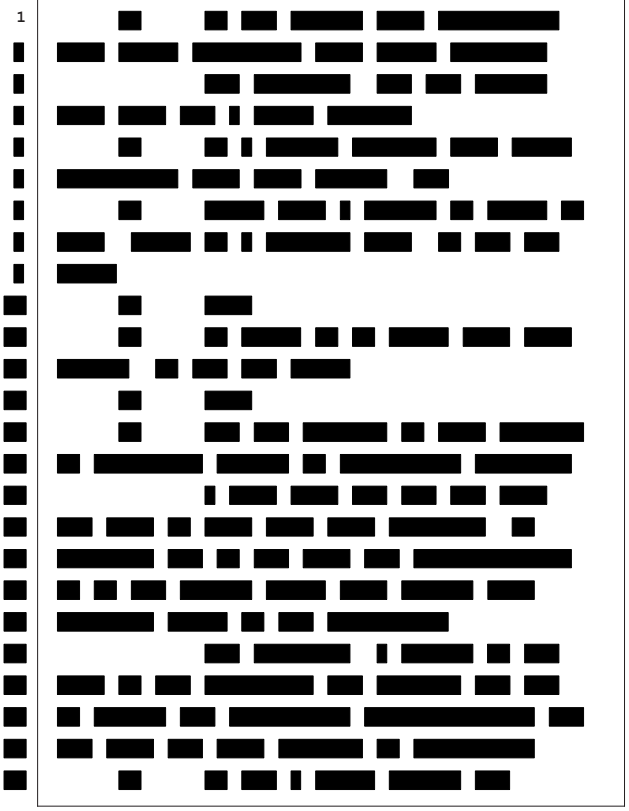
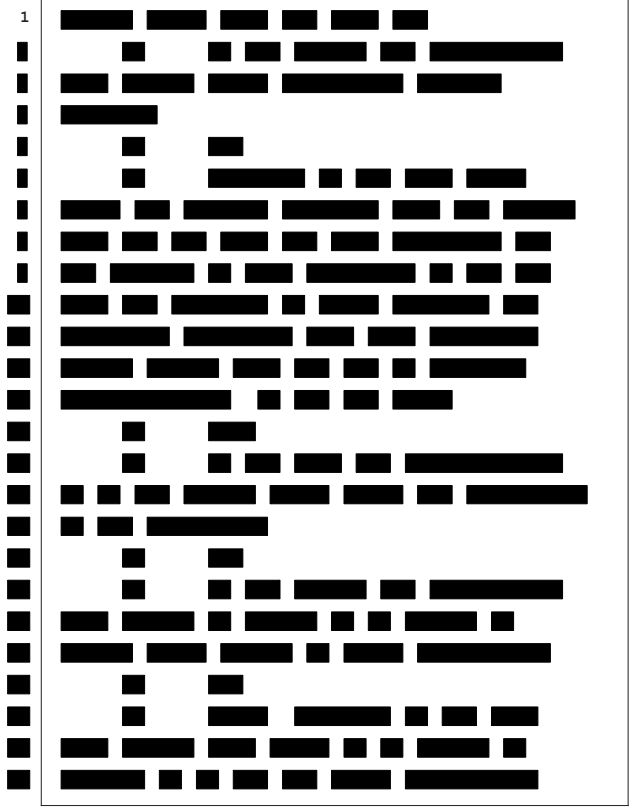
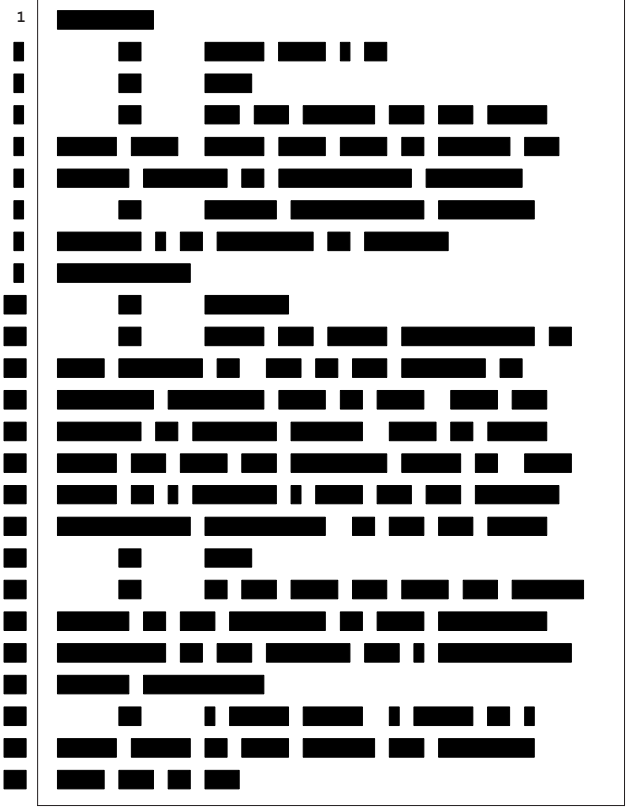
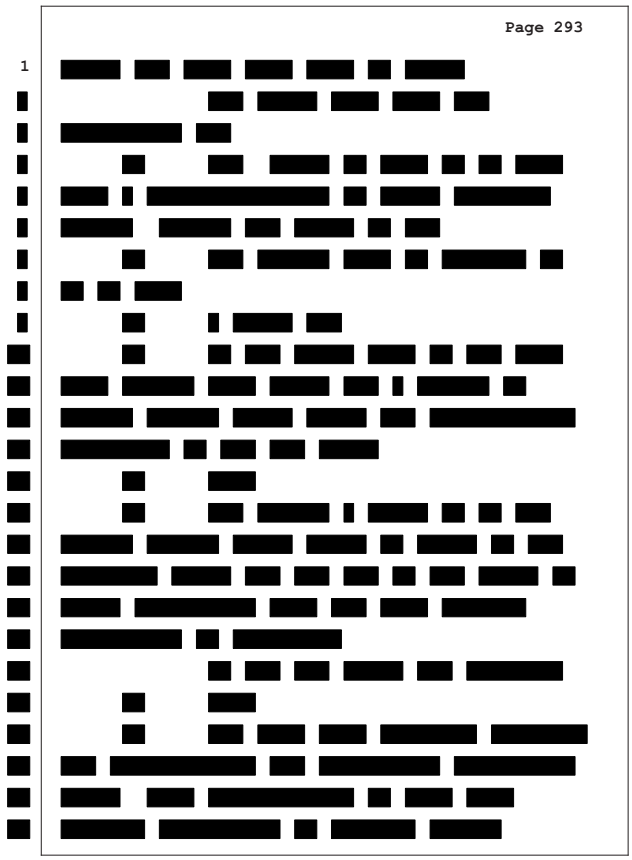
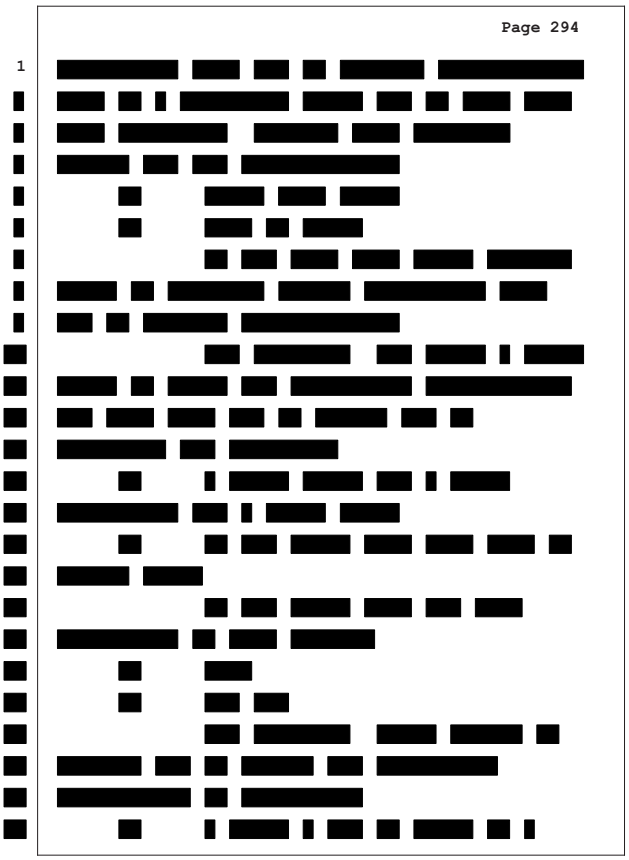
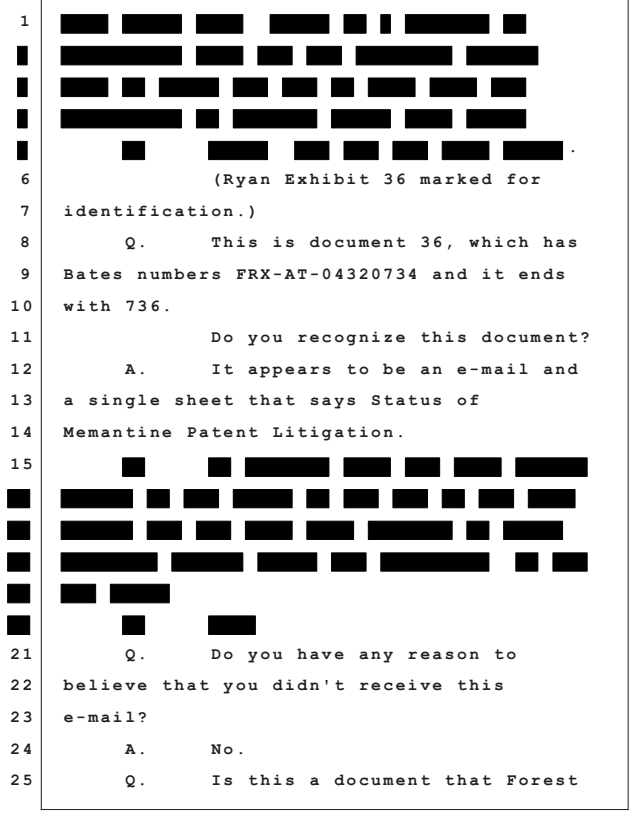












(Ryan Exhibit 36 marked for identification.)

Q. This is document 36, which has Bates numbers FRX-AT-04320734 and it ends with 736.

Do you recognize this document?

A. It appears to be an e-mail and a single sheet that says Status of Memantine Patent Litigation.

Q. Do you have any reason to believe that you didn't receive this e-mail?

A. No.

Q. Is this a document that Forest

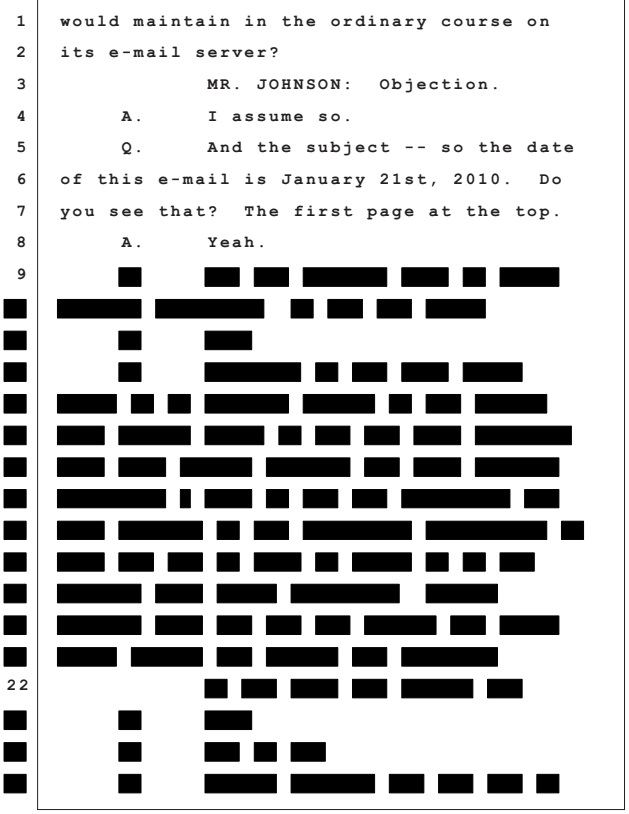
would maintain in the ordinary course on its e-mail server?

MR. JOHNSON: Objection.

A. I assume so.

Q. And the subject -- so the date of this e-mail is January 21st, 2010. Do you see that? The first page at the top.

A. Yeah.



Q. Do you know what the Alphapharm

Q. Exhibit 44 has Bates numbers FRX-AT-04247293 to 95.

Mr. Ryan, the exhibit appears to be three separate letters dated the same date. Do you see that?

A. Yes.

Q. Do you recognize these letters?

A. Not really. That's what I find funny.

Q. Do you know, are these documents that would be maintained by Forest in the ordinary course of business?

MR. JOHNSON: Objection.

A. I believe so.

Q. And were prepared by Forest employees in the ordinary course of business?

A. I believe so, yes.

Q. No one exercised the most favored nation option?

A. Right.

MR. JOHNSON: Objection.

EXHIBIT 320

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: NAMENDA ANTITRUST LITIGATION	**1:15-cv-07488-CM-JCF**

NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANTS FOREST LABORATORIES, LLC; ACTAVIS, PLC; FOREST LABORATORIES, INC.; AND FOREST LABORATORIES HOLDINGS LTD.

PLEASE TAKE NOTICE THAT, pursuant to Federal Rule of Civil Procedure 30(b)(6), Direct Purchaser Plaintiffs in the above-captioned litigation, by and through their counsel, will take the videotaped deposition upon oral examination of **Defendants Forest Laboratories, LLC; Actavis, plc; Forest Laboratories, Inc.; and Forest Laboratories Holdings Ltd.** (hereinafter and in Exhibit A referred to as "Forest"). The deposition, which will be stenographically recorded and videotaped before an officer duly authorized to administer oaths, will be held on July 19, 2017 at 9 am at the offices of Garwin Gerstein & Fisher LLP, 88 Pine Street, 10th Floor, New York, NY 10005. All counsel are invited to participate and cross examine.

NOTICE IS HEREBY GIVEN that, pursuant to Federal Rule of Civil Procedure 30(b)(6), Defendants are required to present one or more representatives to testify on their behalf and to give testimony on topics set forth in Exhibit A hereto. The person or persons so designated shall be required to testify concerning the matters known or reasonably available to Defendants with respect to each topic.

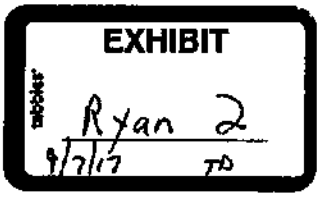
Dated: July 10, 2017

Respectfully submitted,

Rochester Drug Co-Operative, Inc. and the Proposed Class

JM Smith Corporation d/b/a Smith Drug Company and the Proposed Class

/s/ Dan Litvin



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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2017, I served the foregoing Notice of Rule 30(b)(6) Deposition of Defendants Forest Laboratories, LLC; Actavis, plc; Forest Laboratories, Inc.; and Forest Laboratories Holdings Ltd. on counsel for Defendants via email.

/s/ Dan Litvin

TOPICS FOR EXAMINATION

EXHIBIT A

DEFINITIONS

1. "'703 Patent" means U.S. Patent No. 5,061,703, and its corresponding *ex parte* reexamination certificate.

2. "ANDA" means Abbreviated New Drug Application as defined in 21 U.S.C. § 355(j).

3. "At-Risk Launch" means the launch of an FDA-approved drug (based on FDA review and approval) prior to a final judgment from which no appeal can be, or has been, taken in a patent litigation involving the FDA-approved drug.

4. "Authorized Generic" means a listed drug, as defined in 21 U.S.C. § 355(j), that has been approved under subsection 21 U.S.C. § 355(c); and is marketed, sold, or distributed directly or indirectly under different labeling, packaging, product code, labeler code, trade name or trade mark than the listed drug.

5. "Authorized Generic Namenda IR" means an Authorized Generic version of Namenda IR.

[redacted]

7. "Generic," "AB-rated generic," "generically equivalent product," or "generic drug equivalent" means a pharmaceutical or drug product that has been submitted to, or deemed by, the FDA as meeting the necessary requirements to be an AB-rated alternative to a Reference Listed Drug as such is defined by 21 CFR § 314.94(a)(3) and identified by the FDA.

8. "Generic Namenda ANDA" means any of ANDA nos. 90-042 (Cobalt), 90-051 (Lupin), 90-044 (Orchid), 90-052 (Teva), 90-043 (Upsher), 90-073 (Wockhardt), 90-045 (Barr), 90-048

(Dr. Reddy's), 90-050 (Genpharm), 90-041 (Interpharm), 79-225 (Mylan), 79-236 (Ranbaxy), 90-058 (Sun India and Kendle), 90-044 (Orgenus), 90-244 (Apotex), and any other ANDA that is, or at any time was, seeking FDA approval to market an AB-rated generic version of Namenda IR.

9. "Generic Namenda Competitor" means any entity seeking to produce, market, sell or promote a Generic Namenda Product, including but not limited to Barr Pharmaceuticals, Inc. ("Barr"); Teva Pharmaceuticals USA, Inc. ("Teva"); Cobalt Laboratories, Inc. ("Cobalt"); Orchid Chemicals & Pharmaceuticals Ltd. ("Orchid"); Lupin Pharmaceuticals, Inc. ("Lupin"); Upsher-Smith Laboratories, Inc. ("Upsher-Smith"); Wockhardt Limited (Wockhardt"); Mylan Pharmaceuticals, Inc. ("Mylan"); Genpharm ULC and Genpharm, L.P. (jointly, "Genpharm"); Interpharm Holdings, Inc. and Interpharm Inc. (jointly, "Interpharm") (whose interests in the suit were soon to be acquired by a wholly owned subsidiary of Amneal Pharmaceuticals, LLC ("Amneal"); Sun India Pharmaceuticals Industries, Ltd. ("Sun"); and Dr. Reddy's Laboratories Ltd. and/or Dr. Reddy's Laboratories, Inc. (jointly, "Dr. Reddy's").

10. "Generic Namenda Product" means a drug product that is or was the subject of a Generic Namenda ANDA.

11. "Lexapro" means any drug product that is or was described and the subject to NDA No. 21-323 (or any variant thereof), or any generic pharmaceutical product in which Lexapro is the Reference Listed Drug, regardless of, among other things, the dosage strength, dissolution rate, package size.

[redacted]

[redacted]

14. "Namenda IR" means the branded oral pharmaceutical containing the active ingredient memantine hydrochloride, marketed and sold under the trademark or name "Namenda," "Namenda®," "Namenda 5mg," or "Namenda 10mg," that is the subject of NDA No. 21-487. For avoidance of doubt, "Namenda IR" does not refer to "Namenda Oral Solution" "Namenda XR," or any generic equivalent to those drugs.

15. "Namenda Patents" means collectively, the '703 Patent and any other patent You contend would have affected any Generic Namenda Competitor's right, ability or willingness to market its Generic Namenda Product.

16. "Namenda Patent Litigation" means any patent infringement litigation involving a Generic Namenda Product or Generic Namenda ANDA including the following patent infringement lawsuits: (1) all lawsuits consolidated in *Forest Laboratories, Inc. v. Cobalt Laboratories Inc. et al.*, Civil Action No. 08-cv-0021-GMS-LPS (D. Del.) (consolidated); (2) *Forest Laboratories, Inc. et al. v. Orgenus Pharma, Inc. et al.* Civil Action No. 09-05105-MLC-DEA; *Forest Laboratories, Inc., et al v. Aurobindo Pharma USA, Inc., et al.*, Civil Action No. 1:14-cv-00833-LPS; and (3) any other patent infringement lawsuit against a Generic Namenda Competitor.

17. "Namenda XR" means the branded oral pharmaceutical containing the active ingredient memantine hydrochloride, marketed and sold under the trademark or name "Namenda XR" or Namenda XR®," that is the subject of NDA No. 22-525.

18. "Paragraph IV ANDA Certification" means a certification under section 505(j)(2)(A)(vii) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq. that a relevant patent is invalid, unenforceable, or will not be infringed.

[redacted]

20. "Pediatric Exclusivity" means the period of regulatory exclusivity as described in 21 U.S.C. § 355a, and analogous provisions.

21. "Reference Listed Drug" means the listed drug identified by the FDA as the drug product upon which the applicant relies in seeking approval of its Abbreviated New Drug Application as defined in 21 U.S.C. § 355(j).

22. "Teflaro" means any drug product that is or was described and the subject to NDA No. 20-327 (or any variant thereof), or any generic pharmaceutical product in which Teflaro is the Reference Listed Drug, regardless of, among other things, the dosage strength, dissolution rate, package size.

23. "You," "Your," and "Forest" mean Forest Laboratories, LLC; Actavis, plc; Forest Laboratories, Inc.; and Forest Laboratories Holdings Ltd. and any of their parents, subsidiaries, divisions, subdivisions, affiliates, predecessor and successor entities, partners, officers, directors, employees, agents, independent contractors, legal counsel, or any other person acting, or purporting to act, on its (or their) behalf.

24. The terms "and," "or," and "and/or" shall be construed in the conjunctive or the disjunctive, whichever makes the meaning more inclusive.

TOPICS FOR EXAMINATION

A. Patent Related Topics

1. The identity of the Namenda Patents.

2. Your subjective views and beliefs at the time of the Patent Litigation Settlements as to the strengths and weaknesses of the Namenda Patents in terms of (a) claim scope, (b) validity, (c) enforceability, (d) infringement by any Generic Namenda Product(s) and/or Generic Namenda ANDA(s), and (e) the validity and effect of any patent term extension.

3. Your subjective views and beliefs at the time of the Patent Litigation Settlements regarding the strength of Your position in the Namenda Patent Litigation regarding claim construction, infringement, validity, and patent term extension validity, including Your perceived likelihood of success with respect to each of those issues.

4. The positions You took, including the legal arguments You made and the factual evidence You relied upon, in the following document: Exhibit 11 to Document No. 474-1 in *Forest Laboratories, Inc. v. Cobalt Laboratories Inc. et al.*, Civil Action No. 08-cv-0021(D. Del.).

5. Your basis for refuting the legal arguments and factual evidence offered by Mylan Pharmaceuticals, Inc. in the following document: Exhibit 12 to Document No. 474-1 in *Forest Laboratories, Inc. v. Cobalt Laboratories Inc. et al.*, Civil Action No. 08-cv-0021(D. Del.).

6. The factual and legal basis for Your contention in the Namenda Patent Litigation that the asserted Generic Namenda Products were infringing or would directly or indirectly infringe the '703 Patent.

7. The factual and legal basis for Your contention in the Namenda Patent Litigation that the claims of the '703 Patent: (1) were patentable subject matter under 35 U.S.C. § 101; (2) were novel and non-obvious under 35 U.S.C. § 102-103; (3) satisfied the enablement, definiteness, and written description requirements of 35 U.S.C. § 112; and (4) were not illegally broadened under 35 U.S.C. § 305.

8. The factual and legal basis for Your contention in the Namenda Patent Litigation that the patent term extension for the '703 Patent was valid.

9. Your estimate, budget, or forecast, at or before the time of settlement, of the amount of litigation expenses that You saved by settling the Namenda Patent Litigation.

10. Your estimate, at or before the time of settlement, of the likely future timing of the Namenda Patent Litigation absent the settlement.

[redacted]

EXHIBIT 323

In The Matter Of:

THE PEOPLE OF THE STATE OF NEW YORK, v. ACTAVIS, PLC, and FOREST LABORATORIES, LLC,

---

November 11, 2014

Southern District Court Reporters

Original File EBBDACTF.txt

Min-U-Script® with Word Index

our business works.
Q. You agree that it was a key priority of Forest in January 2014 to continue fueling the shift of Namenda to Namenda XR, right?
A. We were and remain focused on promoting our newer, more innovative product, which is Namenda XR.
Q. And Namenda XR, according to the models we saw, has only a chance of losing sales to generics whereas Namenda IR has a chance, right?
A. I don't know. My personal view is that it is not that easy, but there are probably models that show that, as we have established.
Q. Now, this gets a bit confusing because the numbers are the same but I want t now talk about a different conversion number. The percentages are the same. But now instead of talking about the Namenda XR conversion to generic Namenda IR, right, the kind of reverse conversion, I want to talk about your efforts to convert patients on Namenda IR to Namenda -- to branded Namenda XR, OK?
A. OK.
Q. And the reason I did that preamble is because the number comes up again. I don't want people to get confused that it is the same number but it is a different concept.
When you started as CEO, Forest was predicting that it

could switch approximately of the Namenda IR patients to Numidia XR before generic entry without a forced switch, right?
A. Before I started as CEO, I believe that was their projection.
Q. And Forest expected that implementing a forced switch would allow the company to achieve a higher level of switching to Namenda XR than it would be able to achieve otherwise, correct?
A. I believe that we thought if we did that, we would put ourselves in a more competitive situation to do that but no guarantee.
Q. If the hard switch were properly executed, Forest would achieve significantly higher levels of conversion from Namenda IR to Namenda XR than it would have achieved absent the forced switch, right?
A. That was the goal.
Q. And in order to take advantage of the lower generic erosion rate for Namenda XR, you had to accomplish that switching before generics enter the market, correct?
A. That is correct.
Q. And it's more difficult and expensive for you to promote XR once generic IR enters the market, right?
A. It would be very, very difficult.
Q. And you felt it was important that any -- strike that.
A forced switch could result in of

Namenda IR patients switching to XR prior to generic entry, right?
A. It could.
Q. And doing the forced switch would help the Namenda sales stream -- doing the forced switch would help preserve the Namenda sales stream after Namenda IR generic manufacturers enter the market, right?
A. Not necessarily. It would make us more competitive to be able to compete against generics, absolutely.
Q. And to help preserve the --
A. That would be the goal. We'll see how it plays out.
Q. And so by doing the hard switch, Forest hopes to hold on to a large share of its bases instead of losing them to generic competition?
A. That would be the hope as well but up against lots of barriers and obstacles.
Q. And Forest modeled the improvements to its bottom line that would result from the hard switch, right?
A. It certainly did, yes.
Q. Let's look at one of those documents.
Before we do, what is Merz, M-e-r-z?
A. Merz is a German pharmaceutical company.
Q. And Merz developed Namenda, right?
A. Well, Merz developed memantine, which is the chemical name for Namenda. Forest actually developed Namenda in the United

States, did the clinical studies, did the clinical development and regulatory work with the FDA and the like. Merz did not do that.
Q. OK. And Merz licenses Forest the right to Namenda?
A. No, to the chemical memantine, which we then turned into Namenda.
Q. Thank you. Thank you.
And you pay Merz a royalty for Namenda sales, is that right?
A. We have, almost or thereabouts.
Q. OK. Let me show you a presentation that was developed to send to Merz in January 2014. In your binder it is tab 6. We can turn to the PowerPoint that's on the third.
If you could go to page 6 of that PowerPoint.
Now, on page 6, it says that Namenda XR from the hard switch, right?
A. Yes.
Q. Does that sound about right to you?
A. I think that was the forecast that was put into this model. We'll see if it happens.
Q. And it says sales from a soft switch would only be . but sales from the hard switch would be . right?
A. That's what it says.
Q. Does that seem right to you?

EXHIBIT

328

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
C.A. No. 1:15-cv-07488-CM
----------x

IN RE:

NAMENDA DIRECT PURCHASER
ANTITRUST LITIGATION
----------x

1221 Avenue of the Americas
New York, New York

October 11, 2017
10:36 a.m.

*** HIGHLY CONFIDENTIAL ***

VIDEOTAPED 30(b)(6) DEPOSITION of FOREST LABORATORIES (now ALLERGAN) and its Representative JULIE A. SNYDER, taken by the Plaintiffs, held at the aforementioned time and place, before Sherri Flagg, a Registered Professional Reporter, Certified LiveNote Reporter, and Notary Public.

* * *

[redacted]

BY MR. ENGER (continuing):

Q. Ms. Snyder, you've just been handed Exhibit Number 1. Have you seen this July 10, 2017, deposition notice relating to patent topics before?

A. No.

Q. Are you aware that this notice requires Forest to produce a representative to testify on behalf of the company about the listed topics?

A. Yes.

Q. Will you turn to page 9, please.

MS. McDEVITT: Counsel, I'd just like to interject for the record that pursuant to the agreement to produce Ms. Snyder for this deposition on the three identified and in some instances narrow topics, I think those are the topics that we ought to be working off,

not the notice which has been modified by our subsequent agreement.

MR. ENGER: Understood.

BY MR. ENGER (continuing):

Q. Are you Forest's designated representative for topic number 9, which relates to Forest's estimate, budget or forecast at or before the time of the settlement of the amount of litigation expenses that Forest saved by settling the Namenda patent litigation?

MS. McDEVITT: I'm just going to interpose the same objection that I just stated.

A. Can you repeat the question?

Q. Are you Forest's designated representative to testify on behalf of the company about topic number 9, which is Forest's estimate, budget or forecast at or before the time of settlement of the amount of litigation expenses that Forest saved by settling the Namenda patent litigation?

A. That is related to one of the topics that I'm prepared to talk about.

[redacted]

[redacted]

[redacted]

[redacted]

Q. If you can. What are the things that Mr. Coletti told you about the things that go into litigation?

A. Sure. I mean, to -- litigation fees, attorney fees; there are, you know, a number of witnesses, fact witnesses, expert witnesses, that we would -- you know, that we'd incur costs related to those. I mean, there's everyday things like copying and graphic -- you know, graphics people to prepare things for court, there's hotel rooms, there's food; a number of different pieces of -- a number of different costs.

Q. Do you recall any other things that go into litigation besides attorneys' fees, fact witnesses, expert witnesses, copying, graphics personnel, hotel rooms and food?

A. That's what I recall off the top

of my head.

Q. What did Mr. Coletti tell you about things related to litigation costs?

MS. McDEVITT: Objection to form.

A. Litigation costs. I mean, we talked about, you know, how they can vary. I mean, they can vary for a number of -- you know, a number of things, like all the things I provided there in the list. The costs vary, you know, depending on the case, depending on the time frame that they're -- the time frame for litigation. There's a lot of varying costs.

Q. Apart from certain costs can vary on a case-to-case basis and on a time-frame basis, did Mr. Coletti tell you anything else about things related to litigation costs?

A. I'm sure there were other things that we discussed in the conversation. But like I said, it's a very broad question.

Q. Nothing else comes to mind?

A. Nothing else comes to mind, off the top of my head.

Q. You also reviewed some documents in preparation for your deposition, correct?

A. Yes, that's correct.

[redacted]

Q. Could you briefly tell me your education history since high school?

A. Sure. I -- after high school I

went to college, Drew University, with a degree in applied math; and then I got an MBA from Rutgers University with a concentration in marketing.

Q. What year did you receive your degree from Drew University?

A. Are you asking my age now? 1996.

Q. I apologize. What year did you receive your MBA from Rutgers University?

A. I believe it was 2001.

Q. Briefly, again, tell me your employment history since graduating from University.

A. Sure. I spent a few months as a math teacher and that was probably about three months; and then I went to Prudential, worked in their actuarial department for about three years.

Then I -- I don't remember what was next. I went to the National Exchange Carrier Association and worked in their -- doing statistics for statistical modeling; and after that I went to Health Products Research and I did pharmaceutical analytic consulting about two years.

Then I went to Schering-Plough and spent about three years there in their business analytics group as well as marketing. And then I've been at Forest/Actavis/Allergan since 2007, working in the marketing group for the entire time.

Q. Have you ever had any responsibilities for overseeing litigation?

A. No.

Q. What are your responsibilities since you've been at Forest, Actavis and Allergan since 2007, briefly?

A. I worked on the Namenda marketing team for the first three to four years, then moved over to launch one of our other products for about three years; and then came back to head up the Namenda franchise marketing team starting in -- I believe that was 2014.

Q. Did you work closely with attorneys involved in litigation?

A. Not really, no. I've had conversations with them when I have a question but I don't really work closely with them.

Q. Do you have any personal experience with litigation costs?

A. Personal experience, no.

Q. You understand that this lawsuit involves the drug Namenda, correct?

A. Yes.

Q. Apart from your work on the marketing team for Namenda, have you ever had any other Namenda-related responsibilities?

A. It's all been on the marketing team, yeah.

Q. At a high level, what were your marketing responsibilities for Namenda?

A. You know, it varied over the years, but I worked with the sales force communications creating materials with our ad agency, forecasting, non-personal promotion. Pretty much, you know, everything related to the brand from a marketing capacity.

Q. Were you involved with the Namenda patent litigation?

A. No.

Q. Apart from preparing for this deposition today, did you ever speak with anyone about the Namenda patent litigation?

A. Not that I can remember.

Q. Are you aware that there was a

settlement in principle of the Namenda patent litigation between Forest and Mylan in approximately March of 2010?

A. I'm aware there was a settlement. I didn't know the date but that sounds right.

Q. At the time of the settlement in principle with Mylan and assuming that the Namenda patent litigation had not settled, how much did Forest expect to spend on attorneys' fees through trial and post-trial briefing?

MS. McDEVITT: Objection to form.

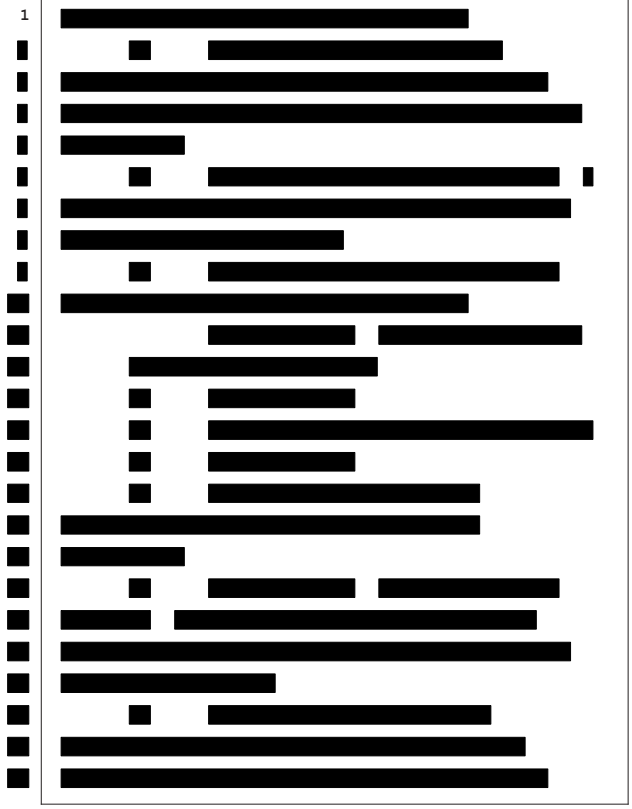
A. Can you repeat that? That was long, that question.

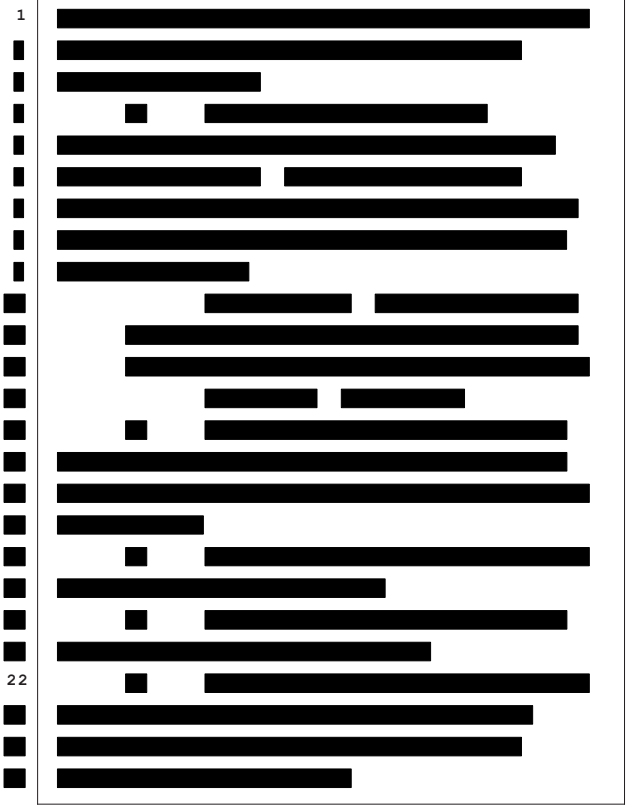
Q. Yes, ma'am. Just to roadmap where we're going, we're going to talk about attorneys' fees and litigation savings associated with attorneys' fees.

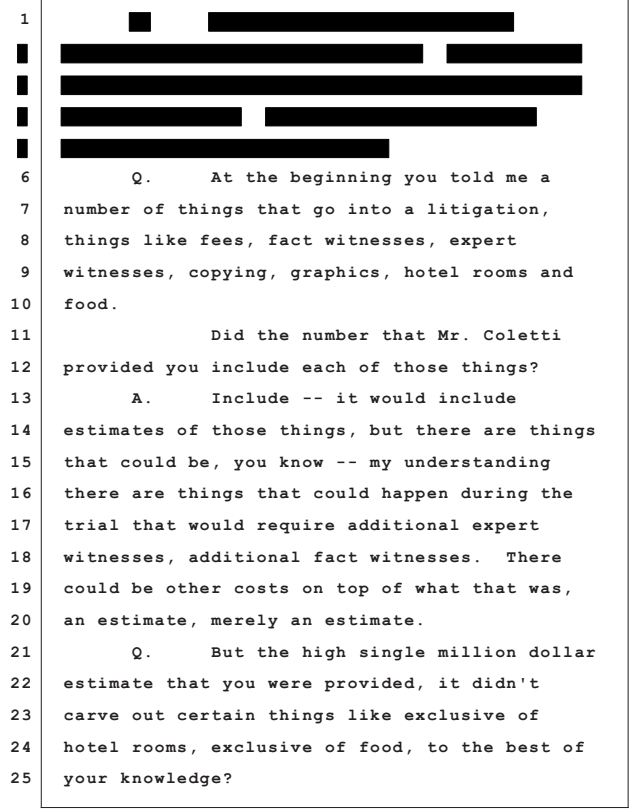
A. Okay.

[redacted]

[redacted]







Q. At the beginning you told me a number of things that go into a litigation, things like fees, fact witnesses, expert witnesses, copying, graphics, hotel rooms and food.

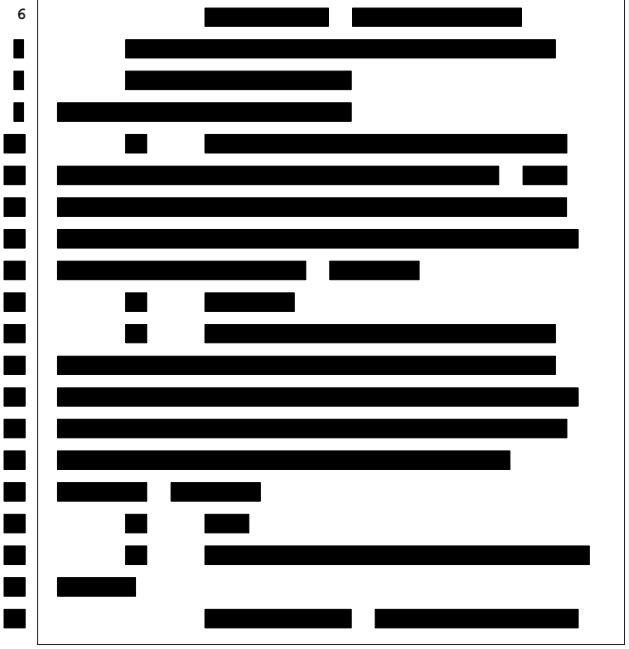
Did the number that Mr. Coletti provided you include each of those things?

A. Include -- it would include estimates of those things, but there are things that could be, you know -- my understanding there are things that could happen during the trial that would require additional expert witnesses, additional fact witnesses. There could be other costs on top of what that was, an estimate, merely an estimate.

Q. But the high single million dollar estimate that you were provided, it didn't carve out certain things like exclusive of hotel rooms, exclusive of food, to the best of your knowledge?

MS. McDEVITT: Objection to form.

A. My understanding is that that was the total -- you know, his estimate as of yesterday when we talked, his estimate as to what it could potentially cost.



[redacted]

Q. Ms. Snyder, can you answer my question? I intend to move on as soon as you answer this question.

A. Ask me -- please ask me the question again.

MR. LETTER: Please read it back.

(Requested portion read.)

MS. McDEVITT: And I'm going to object to the question and instruct the witness not to answer as outside the scope of the agreed-upon topics that she's here to testify about today.

BY MR. LETTER (continuing):

Q. Are you going to follow your counsel's instruction?

A. I am.

MR. LETTER: I'll note for the record that I disagree with the instruction not to answer. It's not a

privilege issue.

BY MR. LETTER (continuing):

Q. So, Ms. Snyder, back to Solomon Exhibit 1, the list of previous Forest-authorized generics in topic 3. Were you able to confirm that these were, in fact, either launched by Forest or licensed to another company to launch authorized generic versions of these particular drugs?

A. What are you looking at now?

Q. Yes, topic 3. It is on page 8, which I believe is the last page.

A. So I mean, some of -- some of these products were Forest products, some of them may not have been Forest products based on, you know, some of the acquisitions -- like Carafate looks like something we acquired from another company so maybe -- so while it's listed under Forest, I don't know if these were Forest NDAs.

[redacted]

[redacted]

[redacted]

[redacted]

Q. Since July 2015 -- and when I say "July 2015," that's when generic Namenda Immediate-Release products came on the market, so we're on the same page.

A. Um-hmm.

Q. Since July 2015, has Forest ever been unable to supply its customers' needs for Namenda Immediate-Release, either tablets, oral solution or authorized generic?

A. Not that I'm aware.

Q. In time periods that preceded July 2015, has Forest ever had a supply shortage for Namenda Immediate-Release tablets?

A. Not that I'm aware. I mean, I can't guarantee that there was never something on a backorder list or anything. You know, to the best of my knowledge, there was not a supply shortage.

Q. Are you familiar with the FDA's list of drug shortages?

A. Yes.

Q. I will represent to you that I searched for drug shortages related to memantine hydrochloride and I never saw an

appearance by Namenda Immediate-Release. Do you have any reason to doubt the results of that search?

A. No.

Q. Has Forest ever had -- has Forest ever encountered a supply shortage for memantine hydrochloride API?

A. Not that I'm aware.

Q. Does Forest always attempt to meet customer demand across all products?

MS. McDEVITT: Objection to form.

A. I can't speak to all products. Obviously Forest would want to supply their customers with the products they need.

Q. Until the launch of generic Immediate-Release Namenda in July 2015, was Forest able to supply the entire memantine hydrochloride market by itself?

MS. McDEVITT: Objection to form.

A. Can you say that again? I mean, I didn't -- can you read that back?

(Requested portion read.)

A. It's a broad question. I'm not sure what you're asking.

Q. Sure. So when I say "memantine

hydrochloride market," I'm referring to that list that we went over earlier of Namenda Immediate-Release tablets, Namenda Immediate-Release oral solution, Namenda Extended-Release capsules, and Namzaric. Are we on the same page?

A. I'm just not sure what you're asking. Are you asking was there ever a shortage of any of those products? I'm not sure what you're asking.

Q. Sure, if you'd like to characterize it that way. Can you think of a shortage of any of those products ever?

A. Yes. There were times when there were products on backorder, absolutely.

Q. Were any of those Namenda Immediate-Release products?

A. Like I said before, I mean, I don't recall a situation where there was an issue supplying Namenda Immediate-Release, but I -- you know, there could have been a backorder at some time that I was not aware of.

Backorders are very common, you know, so I don't know.

Q. Does Forest attempt --

Forest/Actavis/Allergan, do they attempt to rectify backorders as soon as possible?

A. Of course.

Q. I am now going to switch gears into the personal capacity declaration topic. Shall we take a break?

MS. McDEVITT: Do you want to take a break.

THE WITNESS: Sure.

MS. McDEVITT: Why don't we.

VIDEO TECHNICIAN: The time on the video monitor is 1:01 p.m. We're off the record.

(Lunch recess taken.)

Q. Ms. Snyder, please review that. While you're doing so, I will read for the record that this was a document produced by Forest to plaintiffs in this litigation bearing the Bates stamp FRX-AT-03794674. And let me know when you've had an opportunity to review.

A. (Perusing exhibit.)

Okay.

Q. So, Ms. Snyder, very early on in this deposition when Mr. Enger was asking you questions, you said that, as part of the Namenda marketing team, one of the duties that you undertook was to write sales force communications. Do you recall that?

A. Yes.

Q. Is this a communication to sales representatives that you wrote? And the reason I ask that is because it says "Thanks Julie" down at the bottom.

A. Right. I mean, it looks like something that, you know, I drafted based on this. But there's no information on whether I sent this or whether someone, you know, wrote it and I reviewed it. You know, people write -- on my team would write communications

for me as well, so I'd have to see more detail to know for sure.

Q. Is it fair to say that if someone on your team wrote this communication and it says "Thanks Julie," you would probably have reviewed it before it went out?

A. Yes.

Q. Are you familiar with something called metadata?

A. Not much but yes.

Q. Essentially it's data about the electronic file that the document comes from?

A. Um-hmm.

Q. And the metadata for this particular document indicates that it's from January of 2015. Do you have any reason to dispute that on the face of the document?

A. No.

Q. So under the bold Important Message there, there's a paragraph that begins "As you know, the District Court." Do you see that?

A. Yes.

Q. And then it references the Court entering a preliminary injunction requiring

Actavis to continue distribution of Namenda Immediate-Release tablets. Do you see that? And that's the same thing that is referenced in the Declaration of Julie Snyder that we talked about earlier, right, the injunction order?

A. Yes.

Q. The second sentence in that paragraph that begins "As you know," says (as read):

We are appealing this decision.

Do you see that?

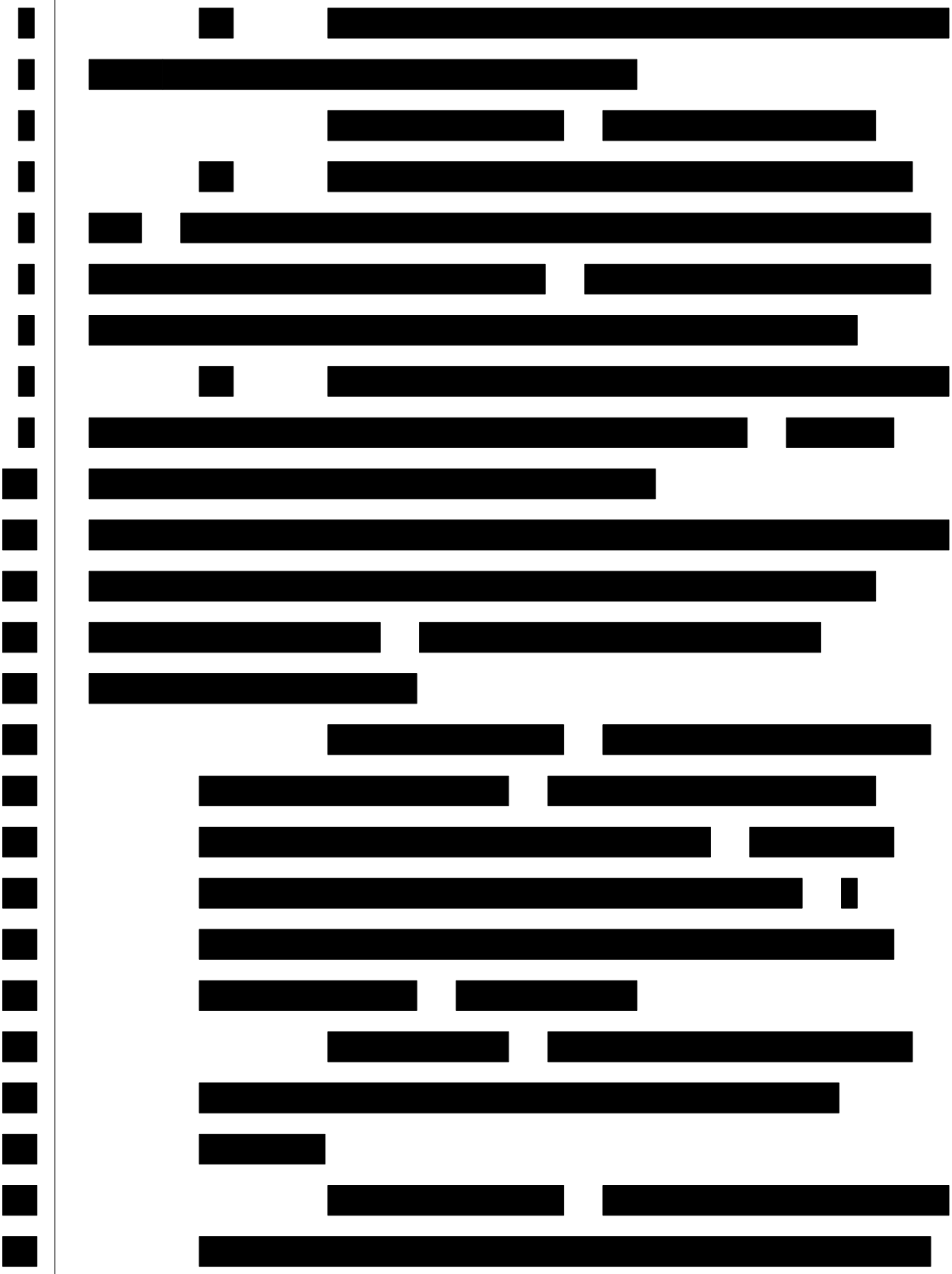
A. Yes.

Q. Why did Forest include information about appealing the injunction order?

A. I don't remember the details, but it's factual.

[redacted]

[redacted]



[redacted]

Q. Is this document prepared and maintained in the ordinary course and scope of Forest's business?

A. Yes. We regularly communicate with sales representatives.

[redacted]

Q. And, Ms. Snyder, while you're reviewing that, I will read for the record that this was a document produced to us by Forest in this case bearing the Bates stamp FRX-AT-03983932 through 935. And let me know when you've had an opportunity to review it.

A. (Perusing exhibit.)

Okay.

Q. Ms. Snyder, do you recognize this document?

A. It looks familiar.

Q. Is this an e-mail from Amanda Seeff? Is that how you say that, Seeff-Charny?

A. Yes, Amanda Seeff-Charny.

Q. To Lou-Ellen Barkan, Jed Levine and Carol Berne dated January 14, 2015?

A. Yes.
Q. And it's got -- similar to what we saw in Solomon Exhibit 3, I believe it was, there is what appears to be an attachment that says "Dear Customer..1.13.15.pdf." Right?
A. Yes.
Q. Do you believe what is attached to this e-mail to be that attachment, that is, Dear Customer..1.13.2015?
A. I would assume so, yes.
Q. You see that Ms. Charny is listed as senior director healthcare alliance development for Actavis. Do you see that?
A. Yes.
Q. Would that fall in the marketing department?
A. No.
Q. So it's safe to assume that Ms. Seeff-Charny does not report to you?
A. That's correct.
Q. So turning to the attachment that begins on page Bates ending 934. Are you with me?
A. Yes.
Q. It says from E-Pharm/Alert at the

top. Do you see that?
A. Yes.
Q. Is that a vehicle through which Forest communicates to certain entities? Is that a fair assessment?
A. Yes. That would be -- yes, that would be a company that we would use to send out communications to in this case it would be pharmacies.
Q. So going back to Snyder Exhibit 6 for a moment, the entities that we discussed on internal page 2, paragraph five, this would be the template for communications about the continued availability of Namenda Immediate-Release to pharmacists, correct?
A. Yes, this would be to pharmacists.
Q. If you look in the body of that e-mail after the salutation Dear Customer, it starts "Forest Laboratories." Do you see that?
A. Yes.
Q. And the end of that first sentence says Forest is appealing the court order to continue the sales of Namenda Immediate-Release tablets. Right?
A. Yes.

Q. If you now turn to the next page, Bates ending 935, at the top it says from E-LTC. Do you see that?
A. Yes.
Q. And, again, this is another entity through which Forest disseminates communications?
A. Yes.
Q. Is this related to any specific entity as delineated in Snyder Exhibit 6?
A. Yes, long-term care facilities.
Q. And under the salutation Dear Customer, the first sentence again says that Forest is appealing the court order about continued sales of Namenda Immediate-Release tablets?
A. It says (as read):
Forest plans to continue the sale of Namenda tablets in accordance with the court order, which we are appealing.
Q. Is this e-mail and attachment prepared and maintained in the ordinary course and scope of Forest's business?
A. What do you mean by that?
Q. So it's a bit of like magic words

for lawyers. What I'm getting at is Amanda Seeff-Charny wasn't off doing her own thing that wasn't related to Actavis's business when she put together this e-mail and sent it to these various people, correct?

A. Her job was working with the associations, this one in particular goes to the Alzheimer's Association, so that would have been in the normal course of business that she would communicate with them.

Q. I see. So if you could turn to the first page again, Bates ending 932, you mentioned Alzheimer's. I think you said society?

A. Association.

Q. Association, I'm sorry. So that would explain the alznyc.org e-mail addresses?

A. Yes.

Q. I have a few more documents like this, but I'm going to try to short-circuit this by asking the question this way: All of the templates, as we talked about earlier, that discuss the continued availability of Namenda IR that went to the various entities, as delineated in paragraph five on internal page 2

of Snyder Exhibit 6, did any of them not mention the fact that Forest was appealing the court order on the injunction?

MS. McDEVITT: Objection to form.

A. I'd have to see all of them. I can't guarantee that every one said it. I mean, there was a -- there was a template but there were a number of different communications going out, so I don't know.

Q. Let me try it this way: Do you, as you sit here right now, recall any that did not contain that language about appealing the court order on the injunction?

A. We sent 900,000 communications. I don't have every one memorized. I don't know.

Q. I certainly appreciate that answer. But you did say that you reviewed templates related to them.

A. Yes, yes.

Q. I would imagine there probably weren't that many templates, right?

A. Right, right. It was also several years ago so I -- I mean, I can't guarantee that every one had that language in it, but the ones that we have here did.

EXHIBT

330

* H I G H L Y C O N F I D E N T I A L *
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civil Action File No. 14-CV-7473
----------x
THE PEOPLE OF THE STATE OF NEW YORK, by and through ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Plaintiff,

- against -

ACTAVIS, PLC and FOREST LABORATORIES, LLC,

Defendants.
----------x
October 22, 2014
10:26 a.m.

Videotaped Deposition of DAVID SOLOMON, pursuant to Notice, held at the offices of White & Case LLP, 1155 Avenue of the Americas, New York, New York, before Jineen Pavesi, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public of the State of New York.

[redacted]

Q. Can you explain what you mean by compliance. 11:32:17AM 11:32:18AM

A. Sure. 11:32:22AM

In the pharmaceutical industry, compliance is focused on compliance with legal and regulatory standards around the development, sale, distribution of our products, very focused on issues related to marketing practices, also focused on the FCPA, the Foreign Corrupt Practices Act, and making sure we were in compliance with that, focused on certain quality measures, making sure that our manufacturing met certain quality measures. 11:32:22AM 11:32:24AM 11:32:29AM 11:32:35AM 11:32:37AM 11:32:41AM 11:32:48AM 11:32:51AM 11:32:54AM 11:32:58AM 11:32:59AM 11:33:01AM

So there was a committee of the board responsible for overseeing all of those compliance activities and that was called the compliance committee. 11:33:02AM 11:33:04AM 11:33:06AM 11:33:09AM

Q. We're going to discuss Namenda today probably at length. 11:33:16AM 11:33:20AM

I am going to use the term Namenda IR to refer to the original formulation of Namenda that was branded just as Namenda, unless you have a suggestion for a better way to refer to it. 11:33:24AM 11:33:26AM 11:33:28AM 11:33:31AM 11:33:35AM 11:33:37AM

A. No, that's fine. 11:33:38AM

MR. TOTO: Does that include the oral solution? 11:33:39AM 11:33:40AM

Q. Let's refer to the tablets as Namenda IR and if you want to talk about the oral solution, let's mention the oral solution specifically. 11:33:50AM 11:33:52AM 11:33:54AM 11:33:56AM

A. Okay, I can do that. 11:33:59AM

[redacted]

Q. Was it from within the company? 11:35:46AM

A. I think so, yes. 11:35:57AM

[redacted]

[redacted]

Q. By activity, do you mean the chemical activity or biological activity; I'm sorry, can you explain that, please.

A. Well, I am not a Ph.D. in this area, so I have a fairly rudimentary understanding of it.

Any two chemicals are going to interact differently with your body, so these are chemicals that are targeting the brain and so, you know, any two chemicals that, you know, that are used are going to

interact differently just because they are different, you know, they are different structurally.

So does Namenda act differently from Aricept in the brain, Aricept would act differently from memantine, they are different chemicals so each of them has their own -- that's why the FDA makes -- you can't just go to the FDA and say, hey, this is kind of like this other drug you approved and so can I go sell it, the FDA says no, the fact it is similar to something else, you still have to go and you still have to do that whole development program I described to you before, you have to characterize it, you have to do all of the pharmacokinetics, you have to do all the toxicology, all the pharmacology work, you have to do all the clinical studies, because little differences can, you know, be the difference between a drug that, you know, saves your life and one that kills you.

So any difference in a

molecule -- but from, how to put it, from -- as we think about the Alzheimer's market and the products that are being used for these patients, these are the products that are being used and they are being used to treat the symptoms of Alzheimer's disease that's being exhibited by these patients.

I think you know none of these cure it, right, tragically we don't have anything that cures Alzheimer's disease, but both of these drugs, Aricept and Namenda, are effective, you know, ameliorating some of the symptomology of the disease.

Q. You understand the term AB-rated?

A. Yes.

Q. Can you explain it to me.

A. AB-rated is a term that's used for generic products.

So what a generic company is looking to do is seek approval of a drug which they say is in fact chemically the

same as a prior approved branded drug and an AB rating from the FDA is the FDA's way of saying, yes, that drug that the generic is selling is in fact chemically identical and therefore can be directly substituted without further intervention from a physician for the product.

Q. Is instant release memantine AB-rated to extended release memantine?

A. No.

Q. Can it be?

MR. TOTO: Object to form.

A. No, because in order to be AB rating you have to have the same dosing schedule as the drug -- AB rating isn't ever used in this context.

It is used for a specific generic equivalent, so, no, it would not be AB-rated.

[redacted]

EXHIBIT 331

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: NAMENDA ANTITRUST LITIGATION	**1:15-cv-07488-CM-JCF**

NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANTS FOREST LABORATORIES, LLC; ACTAVIS, PLC; FOREST LABORATORIES, INC.; AND FOREST LABORATORIES HOLDINGS LTD.

PLEASE TAKE NOTICE THAT, pursuant to Federal Rule of Civil Procedure 30(b)(6), Direct Purchaser Plaintiffs in the above-captioned litigation, by and through their counsel, will take the videotaped deposition upon oral examination of **Defendants Forest Laboratories, LLC; Actavis, plc; Forest Laboratories, Inc.; and Forest Laboratories Holdings Ltd.** (hereinafter and in Exhibit A referred to as "Forest"). The deposition, which will be stenographically recorded and videotaped before an officer duly authorized to administer oaths, will be held on July 18, 2017 at 9 am at the offices of Garwin Gerstein & Fisher LLP, 88 Pine Street, 10th Floor, New York, NY 10005. All counsel are invited to participate and cross examine.

NOTICE IS HEREBY GIVEN that, pursuant to Federal Rule of Civil Procedure 30(b)(6), Defendants are required to present one or more representatives to testify on their behalf and to give testimony on topics set forth in Exhibit A hereto. The person or persons so designated shall be required to testify concerning the matters known or reasonably available to Defendants with respect to each topic.

Dated: June 14, 2017

Respectfully submitted,

Rochester Drug Co-Operative, Inc. and the Proposed Class

JM Smith Corporation d/b/a Smith Drug Company and the Proposed Class

/s/ Dan Litvin

EXHIBIT Solomon 1
DATE: 9/7/17
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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2017, I served the foregoing Notice of Rule 30(b)(6) Deposition of Defendants Forest Laboratories, LLC; Actavis, plc; Forest Laboratories, Inc.; and Forest Laboratories Holdings Ltd. on counsel for Defendants via email.

/s/ Dan Litvin

TOPICS FOR EXAMINATION

EXHIBIT A

DEFINITIONS

1. "'703 Patent" means U.S. Patent No. 5,061,703, and its corresponding *ex parte* reexamination certificate.

2. "ANDA" means Abbreviated New Drug Application as defined in 21 U.S.C. § 355(j).

3. "At-Risk Launch" means the launch of an FDA-approved drug (based on FDA review and approval) prior to a final judgment from which no appeal can be, or has been, taken in a patent litigation involving the FDA-approved drug.

4. "Authorized Generic" means a listed drug, as defined in 21 U.S.C. § 355(j), that has been approved under subsection 21 U.S.C. § 355(c); and is marketed, sold, or distributed directly or indirectly under different labeling, packaging, product code, labeler code, trade name or trade mark than the listed drug.

5. "Authorized Generic Namenda IR" means an Authorized Generic version of Namenda IR.

[redacted]

7. "Generic," "AB-rated generic," "generically equivalent product," or "generic drug equivalent" means a pharmaceutical or drug product that has been submitted to, or deemed by, the FDA as meeting the necessary requirements to be an AB-rated alternative to a Reference Listed Drug as such is defined by 21 CFR § 314.94(a)(3) and identified by the FDA.

8. "Generic Namenda ANDA" means any of ANDA nos. 90-042 (Cobalt), 90-051 (Lupin), 90-044 (Orchid), 90-052 (Teva), 90-043 (Upsher), 90-073 (Wockhardt), 90-045 (Barr), 90-048

(Dr. Reddy's), 90-050 (Genpharm), 90-041 (Interpharm), 79-225 (Mylan), 79-236 (Ranbaxy), 90-058 (Sun India and Kendle), 90-044 (Orgenus), 90-244 (Apotex), and any other ANDA that is, or at any time was, seeking FDA approval to market an AB-rated generic version of Namenda IR.

9. "Generic Namenda Competitor" means any entity seeking to produce, market, sell or promote a Generic Namenda Product, including but not limited to Barr Pharmaceuticals, Inc. ("Barr"); Teva Pharmaceuticals USA, Inc. ("Teva"); Cobalt Laboratories, Inc. ("Cobalt"); Orchid Chemicals & Pharmaceuticals Ltd. ("Orchid"); Lupin Pharmaceuticals, Inc. ("Lupin"); Upsher-Smith Laboratories, Inc. ("Upsher-Smith"); Wockhardt Limited (Wockhardt"); Mylan Pharmaceuticals, Inc. ("Mylan"); Genpharm ULC and Genpharm, L.P. (jointly, "Genpharm"); Interpharm Holdings, Inc. and Interpharm Inc. (jointly, "Interpharm") (whose interests in the suit were soon to be acquired by a wholly owned subsidiary of Amneal Pharmaceuticals, LLC ("Amneal"); Sun India Pharmaceuticals Industries, Ltd. ("Sun"); and Dr. Reddy's Laboratories Ltd. and/or Dr. Reddy's Laboratories, Inc. (jointly, "Dr. Reddy's").

10. "Generic Namenda Product" means a drug product that is or was the subject of a Generic Namenda ANDA.

11. "Lexapro" means any drug product that is or was described and the subject to NDA No. 21-323 (or any variant thereof), or any generic pharmaceutical product in which Lexapro is the Reference Listed Drug, regardless of, among other things, the dosage strength, dissolution rate, package size.

[redacted]

13. "Namenda IR" means the branded oral pharmaceutical containing the active ingredient memantine hydrochloride, marketed and sold under the trademark or name "Namenda," "Namenda®," "Namenda 5mg," or "Namenda 10mg," that is the subject of NDA No. 21-487. For avoidance of doubt, "Namenda IR" does not refer to "Namenda Oral Solution" "Namenda XR," or any generic equivalent to those drugs.

14. "Namenda Patents" means collectively, the '703 Patent and any other patent You contend would have affected any Generic Namenda Competitor's right, ability or willingness to market its Generic Namenda Product.

15. "Namenda Patent Litigation" means any patent infringement litigation involving a Generic Namenda Product or Generic Namenda ANDA including the following patent infringement lawsuits: (1) all lawsuits consolidated in *Forest Laboratories, Inc. v. Cobalt Laboratories Inc. et al.*, Civil Action No. 08-cv-0021-GMS-LPS (D. Del.) (consolidated); (2) *Forest Laboratories, Inc. et al. v. Orgenus Pharma, Inc. et al.* Civil Action No. 09-05105-MLC-DEA; *Forest Laboratories, Inc., et al v. Aurobindo Pharma USA, Inc., et al.*, Civil Action No. 1:14-cv-00833-LPS; and (3) any other patent infringement lawsuit against a Generic Namenda Competitor.

16. "Namenda XR" means the branded oral pharmaceutical containing the active ingredient memantine hydrochloride, marketed and sold under the trademark or name "Namenda XR" or Namenda XR®," that is the subject of NDA No. 22-525.

17. "Paragraph IV ANDA Certification" means a certification under section 505(j)(2)(A)(vii) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq. that a relevant patent is invalid, unenforceable, or will not be infringed.

18. "Patent Litigation Settlement" means any agreement(s) to settle any or all claims in the Namenda Patent Litigation(s) including any agreement that Forest disclosed to the Federal Trade

Commission under MMA § 1112 pertaining to Namenda Patent Litigation(s), the Lexapro Amendment, and the Ceftaroline Agreement.

19. "Pediatric Exclusivity" means the period of regulatory exclusivity as described in 21 U.S.C. § 355a, and analogous provisions.

20. "Reference Listed Drug" means the listed drug identified by the FDA as the drug product upon which the applicant relies in seeking approval of its Abbreviated New Drug Application as defined in 21 U.S.C. § 355(j).

21. "Teflaro" means any drug product that is or was described and the subject to NDA No. 20-327 (or any variant thereof), or any generic pharmaceutical product in which Teflaro is the Reference Listed Drug, regardless of, among other things, the dosage strength, dissolution rate, package size.

22. "You," "Your," and "Forest" mean Forest Laboratories, LLC; Actavis, plc; Forest Laboratories, Inc.; and Forest Laboratories Holdings Ltd. and any of their parents, subsidiaries, divisions, subdivisions, affiliates, predecessor and successor entities, partners, officers, directors, employees, agents, independent contractors, legal counsel, or any other person acting, or purporting to act, on its (or their) behalf.

23. The terms "and," "or," and "and/or" shall be construed in the conjunctive or the disjunctive, whichever makes the meaning more inclusive.

TOPICS FOR EXAMINATION

A. Causation and Regulatory Related Topics

1. Your efforts to develop, manufacture, prepare for commercial marketing, and ultimately launch Authorized Generic Namenda including, but not limited to, Your efforts to obtain regulatory approval from the FDA, Your efforts to obtain raw materials and manufacture launch

quantities of Authorized Generic Namenda, and the impact of any Patent Litigation Settlement(s) on Your efforts and decision to develop, manufacture, prepare for commercial marketing, and ultimately launch Authorized Generic Namenda.

2. Your forecasts relating to Authorized Generic Namenda's unit and/or dollar sales, costs, and profits, as well as any planned, expected, or forecasted impact on Your sales, price(s), erosion rate(s), and/or profits from launching or abstaining from launching an Authorized Generic Namenda.

3. Your contemplated and/or actual launch dates and/or conditions of launch for Authorized Generic Namenda. Your historical policies and practices with respect to launching an Authorized Generic, including the reasons You decide, or You in the past have decided, whether to launch, or not launch, an Authorized Generic with respect to each of Your brand-name products, including, without limitation, Carafate Tablets, Flumadine Tablets, Lexapro Oral Solution, Lexapro Tablets, Namenda Tablets, Tessalon Capsules, and Urso Tablets.

4. Your efforts to obtain Pediatric Exclusivity for Namenda IR.

5. Communications with FDA concerning Pediatric Exclusivity for Namenda IR, including Communications interpreting and/or explaining Pediatric Exclusivity's effect on FDA approval of any Generic Namenda Competitor's Generic Namenda Product.

6. Your internal Communications concerning Pediatric Exclusivity for Namenda IR, including Communications concerning Pediatric Exclusivity's effect on FDA approval of any Generic Namenda Competitor's Generic Namenda ANDA(s).

7. Your beliefs concerning the effects of the any Patent Litigation Settlement(s) on any Generic Namenda Competitor's regulatory approval, manufacturing, launch preparations, launch, marketing, and/or sales of any Generic Namenda Product.

EXHIBIT 347

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In Re: Namenda 343 Statement

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State of New York
Office of the Attorney General
120 Broadway, 26th Floor, Antitrust Bureau
New York, New York 10271

July 10, 2014
9:10 a.m.

Witness: William Meury
Reported By: Anthony Giarro

* TRANSCRIPT OF PROCEEDINGS *

So based on your experience at Forest, is this common, that when generic entry occurs, that Forest looses substantial sales?

MR. TOTO: Object to form: vague, ambiguous.

A Yeah. As I said earlier, you can look at these things on a case-by-case basis. Generally, direct generic competition has a significant impact on sales of a branded product.

-- generally, when there's direct generic competition, whether it's a Forest product or any product, there's an 80 to 90 percent reduction in sales.

WILLIAM MEURY

It's a fairly well-understood dynamic in the industry. I can't go back and recall each product. Again, assuming that there aren't other market factors that could impact it, it's not unusual to see them.

Q Do you know how much less?

A Well, like I said, there's a pretty close correlation between sales and volume. Assuming that these are net sales, assuming that these are fiscal years, you would see a correlation between this picture and actual volume of that was being manufactured.

EXHIBIT 355

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION

No. 15 Civ. 7488 (CM)

x

MEMORANDUM DECISION AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR COLLATERAL ESTOPPEL AND PARTIAL SUMMARY JUDGMENT ON COUNT ONE; DENYING PLAINTIFFS' AND DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT ON COUNT FIVE

McMahon, C.J.:

This action is a sequel to a 2014 antitrust lawsuit brought by the State of New York against Defendants Actavis PLC (now known as Allergan PLC) and Forest Laboratories, LLC (collectively, "Forest"), a pharmaceutical manufacturer. In the earlier case, New York asserted that Forest was attempting to effectuate an illegal "hard switch" product hop by removing its twice-daily Alzheimer's medication, Namenda IR, from the market prior to the entry of generic competition in order to force patients and their physicians to switch to its once-daily version of the same drug, Namenda XR. New York alleged that this hard switch would permit Forest to extend its monopoly over a leading treatment for moderate-to-severe Alzheimer's disease through the end of Namenda XR's patent exclusivity period in 2029.

On December 11, 2014, my colleague the Hon. Robert Sweet issued a preliminary injunction in that prior action, blocking Forest from restricting access to Namenda IR for the remainder of Namenda IR's patent exclusivity period and requiring Forest to affirmatively undo the effects of its announcement of the withdrawal. That ruling was upheld on appeal by the Second Circuit.

Plaintiffs J M Smith Corporation d/b/a Smith Drug Company ("Smith") and Rochester Drug Co-Operative, Inc. ("RDC," collectively with Smith, "Plaintiffs") are direct purchasers of Namenda, and allege that they (along with their proposed classes) were forced to pay supracompetitive prices due to Forest's anticompetitive conduct.

Before the Court are three motions: (1) Plaintiffs' motion for collateral estoppel and partial summary judgment on Count One (Dkt. No. 134); (2) Plaintiffs' motion for partial summary judgment on Count Five (Dkt. No. 138); and (3) Defendants' cross-motion for partial summary judgment on Count Five (Dkt. No. 161).[1]

According to Plaintiffs, the anticompetitive nature of Forest's hard switch was thoroughly litigated in the prior action brought by New York, and the Court should apply the principles of offensive non-mutual collateral estoppel to avoid relitigating those issues again. If Forest is estopped from relitigating the issues decided in Judge Sweet's opinion, they argue, Plaintiffs are entitled to summary judgment on the question of Forest's liability (but not causation or damages) with respect to Count One, which alleges a violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. This motion is granted in part and denied in part.

In Plaintiffs' second motion, they assert that Forest, along with Defendants Forest Laboratories, Inc., and Forest Laboratories Holdings Ltd. (collectively with Forest, "Defendants"), entered into settlement agreements with various generic drug manufacturers to, in effect, delay market entry of generic versions of Namenda IR until three months after Namenda IR's patent exclusivity period expired. These agreements, they argue, illegally extended Forest's

[1] Plaintiffs' motion at Dkt. No. 138 and Forest's cross-motion at Dkt. No. 161 were initially styled as motions addressing Count Three. After an inquiry from the Court (Dkt. No. 187), the parties clarified that both motions were intended to address Count Five (Dkt. Nos. 188, 194), a representation that the Court accepted. (*See* Dkt. No. 195.) All references to "Count Five" in this opinion correspond to references to "Count Three" in the motion papers.

patent license beyond the term of the patent and constituted a "naked restraint of trade" in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiffs seek partial summary judgment on Count Five solely on the issue of whether the settlement agreements constitute a *per se* restraint of trade (and again, not on issues of causation or damages). Defendants cross-move on the same issue, arguing that the settlement agreements were not *per se* anticompetitive, and seek summary judgment dismissing Count Five in its entirety. Both of these motions are denied.

Background

The basic facts of this case were thoroughly reviewed in Judge Sweet's opinion granting a preliminary injunction to New York, *New York v. Actavis, PLC* (*Namenda I*), No. 14 Civ. 7473, 2014 WL 7015198, at *1 (S.D.N.Y. Dec. 11, 2014),[2] the Second Circuit's decision affirming Judge Sweet's opinion, *New York ex rel. Schneiderman v. Actavis PLC* (*Namenda II*), 787 F.3d 638 (2d Cir.), *cert. dismissed*, 136 S. Ct. 581, 193 (2015), as well as in a prior decision of this Court denying Forest's motion to dismiss, *Sergeants Benevolent Ass'n Health & Welfare Fund v. Actavis, PLC* (*Namenda III*), Nos. 15 Civ. 6549, 15 Civ. 7488, 2016 WL 4992690, at *1-*8 (S.D.N.Y. Sept. 13, 2016). The summary of facts in the following pages is drawn from *Namenda I*, *Namenda II*, and *Namenda III*, as well as from Plaintiffs' Rule 56.1 Statement of Material Facts on Count One ("Pls.' Count One 56.1"), Dkt. No. 137, and Defendants' Response ("Defs.' Count One 56.1"), Dkt. No. 158, and Plaintiffs' Rule 56.1 Statement of Material Facts on Count Five ("Pls.' Count Five 56.1"), Dkt. No. 141, and Defendants' Response and Counter-Statement ("Defs.' Count Five 56.1"), Dkt. No. 164. Unless otherwise noted, these facts are

[2] Unless otherwise noted, all references to the *Namenda I* opinion are to the public, redacted version.

undisputed, and I summarize the factual and procedural history of this litigation only to the extent necessary to decide the instant motions.

I. The Parties

Forest manufactures and sells brand-name pharmaceutical products, including the prescription pharmaceutical memantine hydrochloride ("memantine"), which is sold in the United States under the trade names "Namenda" (referred to here as "Namenda IR" to distinguish from Namenda XR) and "Namenda XR." (Defs.' Count Five 56.1 ¶ 1). Memantine is a treatment for moderate-to-severe forms of Alzheimer's disease. Forest developed Namenda IR pursuant to a license and cooperation agreement with Merz GmbH & Co. KGaA, Merz Pharma GmbH & Co. KGaA, and Merz Pharmaceuticals GmbH (collectively, "Merz Entities"), which owned the relevant patent for a memantine-based drug.[3]

Plaintiff Smith is a South Carolina corporation that purchased Namenda IR directly from Forest and alleges that, during the class period, it paid prices higher than it would have absent Defendants' anticompetitive conduct. Plaintiff RDC is a New York corporation that also asserts that it purchased Namenda IR directly from Forest at supracompetitive prices.

II. The Regulatory Scheme

The Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 301 *et seq.*, governs the manufacture, sale, and marketing of pharmaceuticals in the United States. Under the FDCA, a pharmaceutical company must submit a New Drug Application ("NDA") to the U.S. Food and Drug Administration ("FDA") before it may bring a new drug to market. *See generally* 21 U.S.C.

[3] The Merz Entities were originally named defendants to some of the counts in the amended complaint, but per a stipulation of the parties, the Merz Entities were terminated as defendants and replaced by Defendants Forest Laboratories, Inc., and Forest Laboratories Holdings Ltd., which are named as defendants to Counts Three, Four, and Five of the amended complaint. (*See* Dkt. No. 207.)

§ 355. Because the NDA must provide the FDA with sufficient scientific data to demonstrate that the new drug is safe and effective, the testing and approval process is generally "long, comprehensive, and costly." *FTC v. Actavis, Inc.*, 133 S. Ct. 2223, 2228 (2013).

Once approved, though, a patented drug enjoys a period of market exclusivity. That period ends when the drug's patent expires and one or more low-cost generic versions of the drug enter the market and compete with the brand-name drug – what is referred to as going off the "patent cliff." *Namenda II*, 787 F.3d at 643. Generic versions of a drug, or "generics," are "copies of brand-name drugs and are the same as those brand-name drugs in dosage form, safety, strength, route of administration, quality, performance characteristics and intended use." FDA, *Understanding Generic Drugs*, http://1.usa.gov/1SjEIso (last visited May 22, 2017).

A. The Hatch-Waxman Act

In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act (the "Hatch-Waxman Act"), Pub. L. No. 98–417, 98 Stat. 1585, to serve the dual purposes of incentivizing pharmaceutical innovation (by granting patent extensions to brand-name drug manufacturers) and lowering drug prices for consumers (by encouraging competition from generic drugs). *Namenda II*, 787 F.3d at 643-44. To encourage innovation, the Hatch-Waxman Act provides brand-name drug manufacturers the opportunity to extend their exclusivity period beyond the standard 20-year patent term. To encourage competition from generics, the Hatch-Waxman Act makes it easier for generic manufacturers to get their drugs approved by the FDA.

As relevant here, the Hatch-Waxman Act provides two methods by which a brand-name drug manufacturer can extend its period of market exclusivity.

First, a manufacturer can seek an extension of its patent from the U.S. Patent and Trademark Office ("PTO") to account for the time the manufacturer spent obtaining approval

from the FDA for its brand-name drug. 35 U.S.C. § 156. That extension can last no more than five years. *Id.* § 156(g)(6).

Second, a brand-name drug manufacturer can obtain a six-month period of "pediatric exclusivity" if it conducts certain pediatric studies and the FDA determines that use of the drug in children may produce health benefits. 21 U.S.C. § 355a. A grant of pediatric exclusivity does not extend the length of the underlying patent, but can operate to exclude generic competition by delaying the date by which the FDA may approve generics for sale.

Under the Hatch-Waxman Act, the manufacturer of a generic version of an FDA-approved drug may file an Abbreviated New Drug Application ("ANDA"), which allows the generic manufacturer to rely upon the studies submitted by the brand-name drug manufacturer in connection with the original NDA to prove that the generic version of the drug is safe and effective. The ANDA filer must certify that its generic drug, among other things, has the same active ingredient as, and is "bioequivalent" to, the previously-approved drug. 21 U.S.C. § 355(j)(2)(A)(ii), (iv); *Namenda II*, 787 F.3d at 644. A generic drug is bioequivalent to the brand-name drug if it has the same "rate and extent of absorption" of the active ingredient as that of the brand-name drug. 21 U.S.C. § 355(j)(8)(B)(i). "In other words, two drugs are bioequivalent if they deliver the same amount of the same active ingredient content into a patient's blood stream over the same amount of time." *Namenda II*, 787 F.3d at 644.

When a generic drug manufacturer files an ANDA, it must certify one of four things: (1) that the brand-name drug is not patented; (2) that the brand-name drug's patent has expired; (3) that the brand-name drug's patent will expire prior to manufacture of the generic drug; or (4) that the brand-name drug's patent is invalid or will not be infringed by manufacture of the

generic drug. 21 U.S.C. § 355(j)(2)(A)(vii)(I)-(IV). This final route is called "Paragraph IV Certification." *Namenda III*, 2016 WL 4992690, at *4.

The first manufacturer to file an ANDA with a Paragraph IV Certification may be granted a 180-day exclusive marketing period for its generic drug by the FDA. 21 U.S.C. § 355(j)(5)(B)(iv). This means that no other generic manufacturer's ANDA may become effective until "180 days after the date of the first commercial marketing of the drug" by the first ANDA filer. *Id.* § 355(j)(5)(B)(iv)(I).

Because the 180-day exclusivity period can be quite lucrative, generic manufacturers are incentivized to file an ANDA with a Paragraph IV Certification quickly, even if the brand-name drug's patent is ultimately found to be valid. However, the Hatch-Waxman Act provides that a Paragraph IV Certification is treated as an act of patent infringement and gives the holder of the brand-name drug patent the right to sue the prospective generic manufacturer within forty-five days of being notified of the filing of a Paragraph IV Certification. *Id.* § 355(j)(5)(B)(iii). If the brand-name manufacturer fails to bring suit during the forty-five-day period, the FDA's approval of the ANDA will become effective immediately. *Id.*

If the brand-name manufacturer brings such suit within the forty-five day period, the FDA cannot make the ANDA approval effective until after a thirty-month stay, unless a court first decides that the patent is invalid or not infringed by the generic manufacturer's drug – in which case the FDA will follow that determination and approve the ANDA. *Id.* If the patent infringement litigation is not resolved by the conclusion of the thirty-month stay, the FDA's approval of the ANDA becomes effective automatically unless the court handling the infringement litigation alters the length of the stay. *Id.*

The pediatric exclusivity statute, 21 U.S.C. § 355a, provides that, if a brand-name manufacturer performs certain studies requested by the FDA regarding the effects of the drug on children, the FDA may award the brand-name manufacturer a six-month period of "market exclusivity" following the date of the patent's expiration. During the six-month period, the FDA may not approve any new ANDA, but the statute does not provide for automatic revocation of any already-approved ANDAs. *Id.* § 355a(c)(1)(B)(ii). However, if there is a pending ANDA with a Paragraph IV Certification, the six-month pediatric-exclusivity period only attaches if, "in the patent infringement litigation resulting from the certification[,] the court determines that the patent is valid and would be infringed." *Id.*

B. State Drug Substitution Laws

Various state laws seek to encourage competition from generics as well. All fifty states and the District of Columbia have drug substitution laws, which are laws that either permit or require pharmacists to dispense a therapeutically equivalent, lower-cost generic drug in place of a brand-name drug unless the prescribing physician expressly directs that the prescription must be dispensed as written. *Namenda II*, 787 F.3d at 644. Drug substitution laws give a preference to generic drugs because generics are generally cheaper than their brand-name counterparts. (Pls.' Count Five 56.1 ¶ 26.)

However, all substitution laws require the generic drug to be "therapeutically equivalent" to the brand-name drug for which it is substituted, and prohibit the substitution of drugs that are not therapeutic equivalents. Unfortunately, not all states define therapeutic equivalence in the same manner. Thirty states and the District of Columbia have adopted the FDA's definition of therapeutic equivalence and only allow generic substitution if the FDA designates the generic as therapeutically equivalent in a publication commonly referred to as the "Orange Book." *Namenda II*, 787 F.3d at 645; *see* N.Y. Educ. Law § 6816–a(1); N.Y. Pub. Health Law

§ 206(1)(*o*); U.S. Food & Drug Admin., Approved Drug Products with Therapeutic Equivalence Evaluations ("Orange Book") (37th ed. 2017). Other states take other approaches, such as "develop[ing] formularies that list permissible or impermissible drug substitutes" or "giv[ing] discretion to individual pharmacists as long as the drugs are pharmaceutically equivalent." *Namenda II*, 787 F.3d at 645 n.9.

The FDA assigns a number of ratings to therapeutically-equivalent drugs. Drugs for which there are no known or suspected bioequivalence problems are assigned ratings of AA, AN, AO, AP, or AT, depending on the dosage form, and drugs for which "actual or potential bioequivalence problems have been resolved with adequate *in vivo* and/or *in vitro* evidence supporting bioequivalence" are given the rating AB. U.S. Food & Drug Admin., *Preface to Thirty Seventh Edition*, Orange Book, at xiii. Any of these therapeutically-equivalent ratings would appear to satisfy, for example, New York's requirements for generic substitution. N.Y. Educ. Law § 6816–a(1); N.Y. Pub. Health Law § 206(1)(*o*)(2).

According to the FDA, two drugs are considered therapeutic equivalents "only if they are pharmaceutical equivalents for which bioequivalence has been demonstrated, and they can be expected to have the same clinical effect and safety profile when administered to patients under the conditions specified in the labeling." U.S. Food & Drug Admin., *Preface to Thirty Seventh Edition*, Orange Book, at vii. Two drugs are considered pharmaceutical equivalents if they "contain the same active ingredient(s), are of the same dosage form, route of administration and are formulated to contain the same amount of active ingredient, and to meet the same or compendial or other applicable standards (i.e., strength, quality, purity, and identity)." *Id.*; *see also Namenda II*, 787 F.3d at 645. The FDA considers two drugs to be bioequivalent when they display comparable bioavailability ("the rate and extent to which the active ingredient or active

moiety is absorbed from a drug product and becomes available at the site of drug action") when studied under similar experimental conditions. U.S. Food & Drug Admin., *Preface to Thirty Seventh Edition*, Orange Book, at viii.

The requirement that substituted drugs meet therapeutic equivalence standards, although intended to protect patients, allows brand-name drug manufacturers to "game the system" through a practice known as "product hopping." *Namenda II*, 787 F.3d at 645. Before the patent on a brand-name drug expires and its manufacturer loses market share to cheaper generic competitors – the patent cliff – the manufacturer develops a follow-on version of the drug with a later patent expiration date and encourages patients and their physicians to switch to that version. Because the generic version of the follow-on drug is not "therapeutically equivalent" to the original brand-name drug, pharmacies cannot substitute a generic version of the original drug for the follow-on version – even if the pharmacological difference between the original and the follow-on drugs is negligible. *Namenda III*, 2016 WL 4992690, at *3.

Brand-name drug manufacturers can use a variety of tactics to encourage patients and physicians to convert from the original brand-name drug to the follow-on version prior to the patent cliff. In what has been termed a "soft switch," a manufacturer may aggressively promote and market the follow-on drug to patients and doctors, or may reduce its price compared to the original drug, in order to incentivize voluntary conversions. *Id.* at *4. In what has been termed a "hard switch" (sometimes called a "forced switch"), a manufacturer may stop selling the original drug prior to the expiration of its patent term, in order to force patients and physicians to switch to the follow-on drug in order to ensure continuity of treatment. *Id.* If, after briefly switching from the original brand-name drug to the follow-on brand-name drug, a patient switches back to

a generic version of the original drug, this process is known as "reverse commuting." *Namenda II*, 787 F.3d at 649.

III. Factual History

In June 2000, Forest entered into a license and cooperation agreement with the Merz Entities, German pharmaceutical companies, to give Forest the exclusive right to market a memantine-based drug in the United States under the Merz Entities' patent, U.S. Patent No. 5,061,703 (the "'703 Patent"). (Pls.' Count One 56.1 ¶¶ 3-4.) Pursuant to that agreement, Forest developed Namenda IR, a twice-daily immediate-release memantine-based tablet. *Namenda III*, 2016 WL 4992690, at *2. In December 2002, Forest submitted an NDA to the FDA, seeking approval to market Namenda IR for the treatment of Alzheimer's disease. (Pls.' Count One 56.1 ¶ 5.) The FDA approved that NDA on October 16, 2003, and Forest commercially launched Namenda IR in the United States in January 2004. (*Id.* ¶¶ 6-7.)

Forest then submitted an application to the PTO for a five-year extension to the '703 Patent (originally set to expire on April 11, 2010), to account for the time Forest spent obtaining FDA approval for Namenda IR, as permitted by 35 U.S.C. § 156. (*Id.* ¶¶ 9-10.) The PTO granted that request in March 2009, extending the term of the '703 Patent until April 11, 2015. (*Id.* ¶ 10.)

In January 2014, Forest sought six months of pediatric exclusivity for Namenda IR from the FDA, pursuant to 21 U.S.C. § 355a, and the FDA granted that request in June 2014. (*Id.* ¶ 11; Defs.' Count One 56.1 ¶ 11 (admitting same); *but see* Defs.' Count Five 56.1 ¶¶ 13-15 (disputing that Forest "requested" the pediatric exclusivity period).) That six-month exclusivity period ran from the expiration of the term of the '703 Patent on April 11, 2015 to October 11, 2015. (Pls.' Count One 56.1 ¶ 12.)

Namenda IR was the first medication in the United States approved for individuals with moderate or severe forms of Alzheimer's disease and quickly became one of Forest's best-selling

drugs. *Namenda II*, 787 F.3d at 647. It generated approximately $1.5 billion in annual sales in 2012 and 2013. *Id.*

At least seventeen generic drug manufacturers filed ANDAs seeking to market generic versions of Namenda IR. (*See* Solomon Decl. ¶ 2, Dkt. No. 146-11.)[4] At issue in this case are seven of those companies (the "Generic Competitors"): (1) Interpharm Holdings, Inc. and Interpharm, Inc., which were acquired by a wholly-owned subsidiary of Amneal Pharmaceuticals, LLC (collectively, "Amneal"); (2) Dr. Reddy's Laboratories Ltd. and Dr. Reddy's Laboratories, Inc. (collectively, "Dr. Reddy's"); (3) Lupin Pharmaceuticals, Inc. ("Lupin"); (4) Mylan Pharmaceuticals, Inc. ("Mylan"); (5) Orchid Chemicals & Pharmaceuticals Ltd. ("Orchid"); (6) Sun India Pharmaceuticals Industries, Ltd. ("Sun"); and (7) Teva Pharmaceuticals USA, Inc. ("Teva"). (Pls.' Count Five 56.1 ¶ 16.)

In the fall of 2007, each of these seven Generic Competitors submitted its ANDA to the FDA along with a Paragraph IV Certification. (*Id.* ¶¶ 17-20 (Amneal), 31-34 (Dr. Reddy's), 45-48 (Lupin), 59-62 (Mylan), 73-76 (Orchid), 86-89 (Sun), 100-103 (Teva).) Defendants timely brought suits for patent infringement against each Generic Competitor. (*Id.* ¶¶ 21-22 (Amneal), 35-36 (Dr. Reddy's), 49-50 (Lupin), 63-64 (Mylan), 77-78 (Orchid), 90-91 (Sun), 104-105 (Teva).) Between September 2009 and July 2010, Defendants reached settlement agreements with all seven manufacturers. (*Id.* ¶¶ 23 (Amneal), 37 (Dr. Reddy's), 51 (Lupin), 65 (Mylan), 79 (Orchid), 92 (Sun), 106 (Teva).)

Each settlement agreement contained a virtually identical provision that Plaintiffs assert was anticompetitive. In each case, Defendants granted the Generic Competitor a license to begin

[4] Many of those generic manufacturers have been named defendants in a related suit before this Court, *Sergeants Benevolent Ass'n Health & Welfare Fund v. Actavis, PLC*, No. 15 Civ. 6549, but none is a named defendant in the instant action.

selling a generic version of Namenda IR beginning three months prior to the later of (1) the expiration of the '703 Patent or (2) the end of any pediatric exclusivity period attached to the '703 Patent. (*Id.* ¶¶ 25-26 (Amneal), 39-40 (Dr. Reddy's), 53-54 (Lupin), 67-68 (Mylan), 81-82 (Orchid), 94-95 (Sun), 108-109 (Teva).) This meant that, under the settlements, had Forest not obtained the six-month pediatric exclusivity period under 21 U.S.C. § 355a, the seven Generic Competitors would have been able to begin selling generic versions of Namenda IR on January 11, 2015. However, because the FDA granted Forest the six-month pediatric exclusivity period after the settlement agreements were executed, the Generic Competitors could not begin selling their drugs until July 11, 2015. (*See* Pls.' Count One 56.1 ¶ 13; Defs.' Count One 56.1 ¶ 13.)

In June 2010, Forest obtained approval from the FDA for a second memantine drug, a once-daily extended-release memantine capsule called Namenda XR. *Namenda II*, 787 F.3d at 647. Forest began marketing Namenda XR in July 2013. *Id.* Namenda IR and Namenda XR contain the same active ingredient and have the same therapeutic effect, but Namenda IR is a tablet taken twice a day that releases directly into the bloodstream and Namenda XR is a capsule that is taken once a day and releases gradually. *Id.* Namenda IR and Namenda XR are not, therefore, "therapeutic equivalents" under the FDA's definition of that term, and so cannot be substituted for one another under any drug substitution law that requires substitutes to be certified by the FDA as "therapeutic equivalents." Likewise, generic drugs that are therapeutic equivalents of Namenda IR cannot be substituted for Namenda XR under the same standards. (Pls.' Count One 56.1 ¶¶ 43-44; Defs.' Count One ¶¶ 43-44.)

The key non-pharmacological difference between Namenda IR and Namenda XR relates to their patent protection. Namenda XR's period of patent exclusivity does not expire until 2029, while Namenda IR's expired in 2015. *Namenda II*, 787 F.3d at 647.

When Forest brought Namenda XR to market in 2013, it engaged in a variety of soft-switch tactics to encourage patients and physicians to convert from Namenda IR to Namenda XR before Namenda IR went off the patent cliff in 2015. *See id.* at 647-48. Forest priced Namenda XR below Namenda IR. (Defs.' Count One 56.1 ¶ 66.) Forest stopped actively marketing Namenda IR and heavily promoted the benefits of Namenda XR, including its lower price and once-daily dosage. (Pls.' Count One 56.1 ¶¶ 66-68; Defs.' Count One 56.1 ¶¶ 66-68.)

The parties disagree about whether Forest's soft-switch tactics were effective. (*See* Pls.' Count One 56.1 ¶¶ 69-71; Defs.' Count One 56.1 ¶¶ 69-71.) In *Namenda I*, Judge Sweet concluded that Forest executives were concerned that an insufficient number of patients would switch to Namenda XR before generic versions of Namenda IR entered the market, making a hard switch necessary. *Namenda I*, 2014 WL 7015198, at *18.

It is undisputed that, on February 14, 2014, Forest announced (via a press release, notice to the FDA, and letters to physicians and patients) that it would discontinue sales of Namenda IR on August 15, 2014. (Pls.' Count One 56.1 ¶ 80; Defs.' Count One 56.1 ¶ 80.) In June of 2014, Forest announced that, due to manufacturing issues with Namenda XR, it would continue selling Namenda IR through the fall of 2014. (Pls.' Count One 56.1 ¶ 85; Defs.' Count One 56.1 ¶ 86.)

IV. Procedural History

On September 15, 2014, the New York Attorney General filed an initial complaint against Forest in this court, alleging that the hard switch from Namenda IR to Namenda XR violated federal and state antitrust laws. *See* Complaint, *Namenda I*, 2014 WL 7015198 (No. 14 Civ. 07473), Dkt. No. 1. Shortly thereafter, the Attorney General sought a preliminary injunction to block the discontinuation of Namenda IR sales. *See* Mot. for Prelim. Inj., *Namenda I*, 2014 WL 7015198 (No. 14 Civ. 07473), Dkt. No. 27. Judge Sweet held a five-day evidentiary hearing on the preliminary injunction motion, during which time the court heard testimony from twenty-

four witnesses and received over 1,400 exhibits. *Namenda III*, 2016 WL 4992690, at *6. Based on this evidence, Judge Sweet made 167 factual findings and ultimately concluded that a preliminary injunction should issue. *See Namenda I*, 2014 WL 7015198, at *4-*33.

A few of Judge Sweet's key factual findings can be summarized here. Judge Sweet concluded that, prior to the entry of generic versions of Namenda IR, brand-name Namenda IR and Namenda XR were the only memantine therapies available to Alzheimer's patients. *Id.* at *5. He concluded that all other medications then-approved for the treatment of Alzheimer's disease were acetylcholinesterase inhibitors ("CIs"), which are not considered therapeutic equivalents for memantine-based drugs but instead are considered complements (*i.e.*, memantine and CIs are often prescribed together). *Id.* at *5, *14-*15.

Judge Sweet concluded that, after various soft-switch tactics failed, Forest decided to pursue a hard switch in order to preserve its market share. *Id.* at *16-*22. That hard switch began on February 14, 2014, when Forest publicly announced that it would discontinue sales of Namenda IR on August 15, 2014. *Id.* at *18. Judge Sweet concluded that, for a variety of reasons, patients and physicians were reluctant to switch to Namenda XR absent being forced to do so by a hard switch – for instance, because most Alzheimer's patients are in long-term care facilities and take, on average, nine pills per day, moving from a twice-daily form of Namenda to a once-daily form is not particularly beneficial. *Id.* at *19. Once converted, however, there was a relatively low risk that patients would reverse commute to generic versions of Namenda IR, because Alzheimer's patients are "especially vulnerable" and physicians are therefore reluctant to change their medications, even if it results in cost savings. *Id.* at *28-*31.

Judge Sweet concluded that Forest's hard switch would result in "dramatically higher drug costs for insurers and patients." *Id.* at *31. He also found that Forest had presented no

evidence of economic harm that would result from continuing sales of Namenda IR until the entry of generic competition – aside, of course, from the "harm" to Forest's bottom line. *Id.* at *32-*33.

Judge Sweet ultimately determined that New York had raised "substantial questions" regarding the merits of its antitrust claims because the court concluded that Forest's planned hard switch was anticompetitive, Forest's proposed justifications were pretextual, and any procompetitive effects were outweighed by the anticompetitive impact of the hard switch. *Id.* at *37-*41. Because New York also demonstrated the potential for irreparable harm, and equities favored an injunction, Judge Sweet entered the injunction on December 15, 2014. *See* Order, *Namenda I*, 2014 WL 7015198 (No. 14 Civ. 07473), Dkt. No. 84. That injunction prevented Forest from halting sales of Namenda IR and required Forest to affirmatively undo the effects of its February 2014 announcement by informing patients and physicians that Namenda IR

In May 2015, the Second Circuit affirmed Judge Sweet's ruling on appeal. Significantly, the Circuit also characterized the hard switch as beginning on February 14, 2014 – the date of Forest's public announcement of a planned withdrawal of Namenda IR – concluding that "announcing the imminent discontinuation of a drug is tantamount to withdrawal." *Namenda II*, 787 F.3d at 648.

Pursuant to this decision, Forest kept Namenda IR on the market through July 2015.

On September 22, 2015, Smith filed its initial complaint in the instant case, alleging largely analogous antitrust claims as presented in the original litigation brought by New York. On December 28, 2015, RDC filed its complaint in a separate action, which was then consolidated with this action and recaptioned on January 26, 2016. (Dkt. No. 65). At least two other antitrust actions have been filed against Forest on the same grounds. *See A.F. of L. - A.G.C.*

Building Trades Welfare Plan v. Actavis, PLC, No. 15 Civ. 4406; *Sergeants Benevolent Ass'n Health & Welfare Fund v. Actavis, PLC*, No. 15 Civ. 6549.

On February 16, 2017, Plaintiffs moved for collateral estoppel and partial summary judgment on Count One (Dkt. No. 134) and for partial summary judgment on Count Five (Dkt. No. 138). On March 16, 2017, Defendants cross-moved for partial summary judgment on Count Five (Dkt. No. 161).

Applicable Legal Standard

Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-50 (1986). The moving party has the initial burden of demonstrating the absence of a disputed issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A dispute concerning material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Aldrich v. Randolph Cent. Sch. Dist.*, 963 F.2d 520, 523 (2d Cir. 1992) (quoting *Anderson*, 477 U.S. at 248). A genuine issue for trial exists if, based on the record as a whole, a reasonable jury could find in favor of the non-movant. *See Anderson*, 477 U.S. at 248. In making its determination, the Court must resolve all ambiguities and draw all reasonable inferences in favor of the non-movant. *See id.* at 255.

To defeat summary judgment, it is not sufficient for the nonmoving party to present evidence that is conclusory or speculative, with no basis in fact. *See Anderson*, 477 U.S. at 249-50. Instead, the nonmoving party must go beyond the pleadings and "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The nonmoving party must present "specific facts showing that there is a genuine issue for trial." *Beard v. Banks*, 548 U.S. 521, 529 (2006).

"Summary judgment is designed . . . to flush out those cases that are predestined to result in directed verdict." *Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 907 (2d Cir. 1997).

Discussion

I. Plaintiffs' Motion for Collateral Estoppel and Partial Summary Judgment on Count One Is Granted in Part and Denied in Part

Plaintiffs seek a partial summary judgment of liability on Count One, which asserts that Forest's February 2014 announcement of the upcoming withdrawal of Namenda IR from the market constituted a violation of Section 2 of the Sherman Act. Plaintiffs argue that Forest's antitrust liability for the February 2014 announcement was already determined in the prior *Namenda I* and *Namenda II* litigation and therefore Forest is collaterally estopped from relitigating the issue now. Even though Judge Sweet entered a preliminary injunction in *Namenda I*, Plaintiffs argue that the Second Circuit treated that injunction as permanent in *Namenda II*, and, therefore, that decision constitutes a "final judgment" entitled to collateral estoppel effect.

Plaintiffs' motion is granted in part and denied in part. While key facts regarding Forest's violation of Section 2 were previously litigated and are entitled to preclusive effect, Plaintiffs' injury was not a subject of the prior litigation and therefore the Court cannot enter a "partial summary judgment of liability" in Plaintiffs' favor.

A. Plaintiffs Have Satisfied the Elements of Collateral Estoppel as to Forest's Violation of Section 2

"Collateral estoppel, or issue preclusion, prevents the relitigation of an issue that was raised, litigated, and actually decided by a judgment in a prior proceeding." *Jim Beam Brands Co. v. Beamish & Crawford Ltd.*, 937 F.2d 729, 734 (2d Cir. 1991). In order to establish that an issue was determined in a former adjudication, a party asserting collateral estoppel must establish four things: (1) the issues in the prior proceeding and the current proceeding are identical; (2) the